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Supreme Court, U.S.
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No. 10-173

IN THE

Supreme Court of the United States

BEVERLY S. BYRD AND RALPH T. BYRD, PETITIONERS

v.

JAMES M. HOFFMAN AND GREGORY P. JOHNSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RALPH T. BYRD
pro se

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pro se

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QUESTIONS PRESENTED

1. Does "any act to obtain possession of the property of the estate or of property from the estate or to exercise control of property of the estate" proscribed under 11 U.S.C. Sec. 362(a)3 include acts which raise the mere possibility of some control over estate property in the future such as a debtor's unremoved unserved complaint filed in state court against a bankruptcy trustee and the trustee's counsel alleging improper acts outside their duties to the bankruptcy estate and abuse of process and requesting a constructive trust for property of the estate as a possible remedy at the discretion of the state court?

2. Does "the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate to prevent abuse of process described in 11 U.S.C. Sec. 105(a) of the Code" or "the inherent power of every federal court to sanction abusive litigation practices" cited in *Marrama v. Citizens' Bank* 549 U.S. 365,127 Sup Ct 1105, 1112; 166 L.Ed. 2d 956 (2007) authorize a Bankruptcy Court, without a hearing, to enjoin a debtor from prosecuting the debtor's unremoved unserved state court complaint against a bankruptcy trustee and the trustee's counsel alleging abuse of process and improper acts outside their duties to the bankruptcy estate?

3. When a Bankruptcy Court pursuant to 11 U.S.C. Secs. 105(a) and 362(h) has already awarded full compensation for actual damages as well as punitive damages from a debtor's violations, may the Bankruptcy Court also declare the debtor in civil contempt and deny the debtor's discharge under "the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate to prevent abuse of process described in 11

U.S.C. Sec. 105(a) of the Code" or "the inherent power of every federal court to sanction abusive litigation practices"" cited in *Marrama v. Citizens' Bank* when the declaration of civil contempt and denial of discharge are neither coercive nor compensatory and where the Bankruptcy Court has not expressly explained why the exercise of such authority is "necessary and appropriate"?

PARTIES TO THE PROCEEDING

The debtors in the bankruptcy proceedings below, and the Petitioners before this Court, are Ralph T. Byrd and his wife, Beverly S. Byrd.

The bankruptcy trustee below, Gregory P. Johnson, Esq. and his Special Counsel, James M. Hoffman, Esq. are the Respondents before this Court.

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OPINIONS BELOW

The United States Court of Appeals for the Fourth Circuit issued a published Opinion in *In Re: Byrd* 357 F.3d 433 (4th Cir. 2004) which reversed the dismissal of the underlying involuntary bankruptcy proceeding and allowed the bankruptcy proceeding to go forward.

On March 2, 2010 the Fourth Circuit Court denied rehearing after issuing, on November 19, 2009, its unpublished affirming the unpublished decisions of the United States District Court for the District of Maryland issued July 31, 2008 and July 30, 2008 which affirmed the unpublished decisions of the United States Bankruptcy Court for the District of Maryland rendered September 29, 2007 sanctioning the Petitioners for failing to comply timely with the Bankruptcy Court's order to produce documents demanded by the bankruptcy trustee; and for violating the automatic stay and the Barton Doctrine and the Bankruptcy Court's injunction order pertaining thereto, respectively.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1). The opinion of the Fourth Circuit Court of Appeals was rendered on November 19, 2009. Rehearing was denied on March 2, 2010. On May 28, 2010 this Court extended the time for filing this Petition to July 30, 2010.

RELEVANT PROVISIONS INVOLVED

United States Code Annotated
Title 11. Bankruptcy
Chapter 3. Case Administration
Subchapter IV. Administrative Powers

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

United States Code Annotated
Title 11. Bankruptcy
Chapter 1. General Provisions

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an

abuse of process.

United States Code Annotated
Title 11. Bankruptcy
Chapter 7. Liquidation
Subchapter II. Collection, Liquidation, and Distribution of the Estate

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless-
(6) the debtor has refused, in the case--

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

United States Code Annotated
Bankruptcy Rules
Part VII. Adversary Proceedings
Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(4) a proceeding to object to or revoke a discharge;

STATEMENT

Preliminary Statement

This Statement of the Case may be more detailed than usual to place in context the Bankruptcy Court's conclusions of law, affirmed by the District Court and Fourth Circuit Court of Appeals, that Petitioners deserved to be held in civil contempt and denied their bankruptcy discharge because, *inter alia*, they engaged in dilatory, frivolous, bad faith litigation designed "to frustrate the administration of the estate." App. 33, 52-55, 63, 70- 71. At no time during the course of the litigation were FRCP Rule 11 proceedings brought against the Petitioners. Nevertheless, the Bankruptcy Court's conclusions in this regard were accepted on their face and repeated by the District Court in its opinions, stating, e.g., Petitioners' filings had "trappings of bad faith," were "dilatory and frivolous" filed "in bad faith", "designed to frustrate the judicial process" and "reeked of flagrant abuse" App. 11, 13, 18-19, 21, 99, 101. The Fourth Circuit did not expressly mention these conclusions but apparently accepted them in affirming the judgments of the Bankruptcy Court and District Court below "for the reasons stated by the District Court. Since the basis for these conclusions remains unspecific and generalized, Petitioners feel compelled to provide specifics of the litigation below to help this Court assess the lower courts' conclusions in this regard and consider the other issues presented in this Petition.

In 2001 Platinum Financial Services Corporation, a debt buyer/collector, (hereinafter "Platinum") had claims of approximately $74,000

against Petitioner Ralph T. Byrd (hereinafter "Petitioner") a solo practitioner attorney who practiced law out of his home in Montgomery County, Maryland. The claims consisted of alleged delinquent credit card accounts Platinum purchased from the original lender or from a previous debt buyer. Platinum had obtained judgments in the amount of approximately $32,000 in Maryland state trial courts against Petitioner which he had timely appealed to the appropriate Maryland state appeals court.

On December 14, 2001, while the judgments were still on appeal, and nine days after Petitioner had filed a state court class action lawsuit against Platinum and other debt buyers seeking a declaratory judgment regarding the application of Maryland state credit card regulations, Platinum, as a sole petitioning creditor, filed an Involuntary Chapter 7 Bankruptcy Petition, Case No. 01-25006, against Petitioner in the United States Bankruptcy Court for the District of Maryland. Platinum did so without taking any steps to collect its judgments by conventional methods under Maryland state law. Petitioner objected to the involuntary petition on the grounds that 1) it was filed in bad faith, 2) a bona fide dispute over the debt precluded the involuntary petition and 3) the Bankruptcy Court should abstain from accepting jurisdiction of the matter.

On July 17, 2002, the Bankruptcy Court granted summary judgment in favor of Platinum over Petitioner's objections, entered an Order For Relief; and, on July 18, 2002, appointed a Chapter 7 trustee to take charge of liquidating Petitioners' home and place of business.

On July 24, 2002 Petitioner filed a Notice of Appeal to the United States District Court seeking de novo review of all aspects of the Bankruptcy Court's summary judgment ruling.

On January 24, 2003 in Case No. WMN 02-CV-2675, the District Court ordered the dismissal of the involuntary petition, after considering and deciding only that a bona fide dispute over the debt precluded an involuntary bankruptcy petition based thereon.

In response, the bankruptcy trustee, represented by Respondent James M. Hoffman, Esq., and Platinum appealed to the U.S. Court of Appeals for the Fourth Circuit. Petitioner sought to affirm the District Court's ruling, arguing, once again, that a bona fide dispute over the debt precluded an involuntary bankruptcy proceeding; the involuntary bankruptcy petition was filed in bad faith; and the Bankruptcy Court should have abstained from exercising jurisdiction. See Brief of the Appellee, 2003 WL 25491255 in *In Re: Byrd* 357 F.3d 433 (4th Cir. 2004).

By Order dated March 27, 2003 the District Court granted, over Petitioner's objections, Platinum's motion to stay the District Court's January 24, 2003 Order of Dismissal pending Platinum's appeal to the Fourth Circuit Court of Appeals.

On February 11, 2004 the Fourth Circuit Court of Appeals issued a published opinion in *In re: Ralph T. Byrd*, Case No. 03-1185, (*In re Byrd*, 357 F.3d 433 (4th Cir. 2004)) which held there was no bona fide dispute over the alleged debt and reversed the District Court. However *In re: Byrd* never addressed Petitioner's

extensive arguments for dismissal of the petition due to bad faith filing and abstention. Instead, *In re Byrd* stated, inexplicably, "Byrd admits that, if Platinum was eligible to file its petition, the bankruptcy court was justified in ordering relief against him. We therefore must decide only whether Platinum's claims are the subject of a bona fide dispute." *Id.* at 436. Furthermore, in refusing to address the issue of bad faith filing of the involuntary petition the Fourth Circuit made the fateful comment that "[t]he Bankruptcy Code does not require that a debtor's assets be dissipated while frivolous or hopeless appeals wend their way through the courts ... ." *Id.* at 441.

The Fourth Circuit issued its mandate on or about April 13, 2004 and remanded the case to the District Court for "further proceedings consistent with this decision." The next day the District Court, in turn, remanded the case to the Bankruptcy Court with the same instructions.

On April 26, 2004 Petitioner filed a motion in the District Court requesting the District Court to reconsider its interpretation of the Fourth Circuit's mandate as requiring the District Court to remand the case to the Bankruptcy Court without first considering the un-reviewed issues of bad faith filing and abstention.

In the Memorandum Opinion dated June 15, 2004, the District Court expressed its view that "given the rationale and tenor of the Fourth Circuit's decision this Court is doubtful that it has the authority to consider these issues" (App. 153) and entered an Order denying Petitioner's motion for reconsideration of the

District Court's interpretation of the Fourth Circuit's mandate. The District Court noted Petitioner had "included extensive argument on bad faith and abstention as alternative grounds for affirming this court's decision. The Fourth Circuit, however, made no explicit mention of either of these arguments in its decision." *Id.* Significantly, the District Court four times quoted the Fourth Circuit's language about the Bankruptcy Code not requiring "that a debtor's assets be dissipated while frivolous or hopeless appeals wend their way through the courts, ..." App 152, 155, 156, 157.

On June 25, 2004, faced with having to remain in bankruptcy, Petitioner exercised his right to convert the Chapter 7 involuntary proceeding into a Chapter 11 proceeding. Petitioner sought to remain in Chapter 11 under a plan for reorganization that would include Petitioner repaying all valid claims in their entirety within a reasonable time through either income from his law practice or from a loan using the equity in his home, or, if that failed, through Petitioner's own sale of his home through a conventional real estate broker. .

Nevertheless, on July 14, 2004 the Bankruptcy Court, *sua sponte*, ordered the immediate appointment of a Chapter 11 trustee, over Petitioner's objections, to take charge of the immediate liquidation of the Petitioner's home and place of business, thereby ending Petitioner's 120 day "exclusive period" for filing a plan when the exclusive period had barely begun.

On July 15, 2004 Petitioner filed a Notice of Appeal to the Fourth Circuit from the District Court's June 15, 2004 order denying reconsideration of its

interpretation of the Fourth Circuit's mandate. On November 11, 2004, however, in Case No. 04-1961, the Fourth Circuit Court of Appeals issued a one sentence order granting the trustee's motion to dismiss the appeal.

Within days thereafter Respondent Gregory P. Johnson, Esq., the newly appointed Chapter 11 trustee, employed as "Special Counsel" Respondent James M. Hoffman, Esq., and the law firm of Shulman Rogers, Gandal, Pordy & Ecker, P.A., the same law firm that had previously represented Platinum in filing and prosecuting the involuntary petition and also represented the Chapter 7 trustee until the Bankruptcy Court appointed the Chapter 11 trustee.

On September 2, 2004 Petitioner filed a Notice of Appeal to the U.S. District Court from the order appointing the Chapter 11 trustee and eliminating Petitioner's exclusive period under 11 U.S.C.A. 1121. On September 27, 2004 Petitioner filed a motion for a stay pending appeal of said order. The motion for the stay was denied on October 6, 2004.

Respondent Johnson sought immediately to sell Petitioner's home, despite his co-ownership with his wife, Petitioner Beverly S. Byrd. Therefore on November 11, 2004 Petitioner Beverly Byrd filed for Chapter 13 bankruptcy to protect her interest in the Petitioners' home.

On November 23, 2004 Respondents moved to consolidate Petitioner Beverly Byrd's Chapter 13 case with Petitioner's Chapter 11 case. By Consent Order entered January 13, 2005 Petitioner agreed to

consolidate his Chapter 11 case with Petitioner Beverly Byrd's Chapter 13 case and that both cases would be administered by the Chapter 13 Trustee.

On February 25, 2005 Respondents filed a "First And Final Chapter 11 Trustee's Application For Compensation As Administrative Claimant."

On March 21, 2005, Petitioner filed an opposition to said administrative claims, i.e., that a Chapter 11 trustee should never have been appointed at all and that his fees were objectionable because of conflicts of interest between the duties of a Chapter 11 trustee and Respondent Hoffman, and also that the fees were unnecessary and unjustifiable.

On March 22, 2005 the District Court notified all parties that a hearing would be held on April 14, 2005 in Case No. JFM 04-3312 on the pending appeal of the Bankruptcy Court's order appointing the Chapter 11 trustee and eliminating Petitioner's exclusive period under 11 U.S.C.A. 1121.

Despite the imminent hearing in the District Court on the pending appeal of the Bankruptcy Court's order appointing the Chapter 11 trustee and eliminating Petitioner's exclusive period under 11 U.S.C.A. 1121, the Bankruptcy Court on March 28, 2005, entered an Order Approving First And Final Chapter 11 Trustee's Application For Compensation As Administrative Claimant.

On April 6, 2005 Petitioner filed a Motion For Reconsideration of said order.

At the hearing on April 14, 2005, the District Court, with the consent of all parties, dismissed the pending appeal in Case No. JFM 04-3312 as moot after all parties agreed that "[Petitioner] could still challenge for purposes of fees the appointment of the Chapter 11 trustee as part of the confirmation process" and that the Bankruptcy Court would "revisit the appointment of the Chapter 11 trustee in the context of whether fees should be awarded." The District Court also expressly restated the agreement among all parties that "what we've agreed upon today is that nobody will argue, and indeed, will tell the Bankruptcy Court in fairness, although the issue was presented, that the propriety of the appointment was presented on this appeal, it made no sense to litigate it in this context because, you know, the property wasn't sold. It's now in this context. So therefore nobody's going to argue that Mr. Byrd waived his right to challenge the appointment of the Chapter 11 trustee by not pursuing the appeal."

On June 23, 2005 the Chapter 11 trustee filed a Motion To Convert Case From Chapter 13 To Chapter 7.

On June 27, 2005 the Bankruptcy Court held a hearing on Petitioner's Motion to Reconsider the Bankruptcy Court's March 28, 2005 order approving Respondents' administrative claim and denied said motion in its entirety on the grounds that the substance of Petitioner's objections had been previously considered and rejected by the Bankruptcy Court. However the Bankruptcy Court declined to issue an order at that time.

On July 11, 2005 Petitioner filed an opposition to Respondents' motion to convert the case to Chapter 7 on the grounds that Respondents had expressly acknowledged Petitioners' continued right to challenge Respondents' very appointment in the context of Petitioners' objections to Respondents administrative claims during the process of confirming Petitioners' Chapter 13 Plan.

On August 4, 2005 the Bankruptcy Court issued an order granting Petitioners' motion for reconsideration of the allowance of the administrative claims but denying the relief requested therein.

On August 15, 2005 Petitioners filed a timely Notice of Appeal of the Bankruptcy Court's August 4, 2005 Order.

On September 9, 2005 Petitioners filed in the Bankruptcy Court a motion to stay any hearings on the Respondents' motion to convert the case to Chapter 7 on the same grounds set forth in Petitioners' July 11, 2005 opposition to the motion to convert.

On September 26, 2005 Respondents filed in the District Court in Case AW 05-2389 a Motion To Dismiss For Lack Of Jurisdiction arguing Petitioners could only challenge the administrative claim awards after the claims became "final" which, according to Respondents, would only occur after the Chapter 13 plan had been converted to Chapter 7 for inability to accommodate the huge administrative claim awards and only then after Petitioners' property had been liquidated and a final dollar amount of the estate had been determined.

On October 5, 2005 the Bankruptcy Court held a hearing on Petitioners' September 9, 2005 motion to stay any hearings on Respondents' motion to convert the case to Chapter 7. The Bankruptcy Court denied, from the bench, the motion for the stay and took under advisement Respondents' motion to convert.

On October 19, 2005 the Bankruptcy Court entered its order regarding the Respondents' motion to convert the case to Chapter 7 and Petitioners' motion to stay any consideration thereof. The Bankruptcy Court's order stated "it does not appear to this Court that the District Court entered an order or ruling or otherwise directed the enforcement of an agreement. The Debtor's papers and argument are not models of clarity on this point. . . . Notwithstanding that the Debtor repeatedly quotes the Honorable J. Frederick Motz in support of the existence of this agreement between the parties, the Court cannot discern from the papers before it that an agreement to stay any matter was reached in proceedings conducted before the District Court on April 14, 2005, and it does not appear that Judge Motz imposed any stay of proceedings in this Court, or precluded the parties from filing motions or from being heard on any motions not yet filed as of April 14, 2005."

On November 2, 2005 Petitioners filed an Amended Chapter 13 plan that included the $2850.00 per month which they had already been paying the Chapter 13 Trustee from November 23, 2004 through August 23, 2005. Under the Amended Chapter 13 Plan this sum rose to $3500.00 per month beginning August 23, 2005 for the next twelve months, and would rise to $6052.00 per month for the next thirty-eight months.

Said Chapter 13 Plan assumed that all the administrative claims would be paid in full despite the fact that the award of the claims was on appeal.

On January 9, 2006 Petitioners filed in the Bankruptcy Court a Motion To Continue Confirmation Hearing pending the outcome of the appeal of the award of the administrative claims and the appointment of the Chapter 11 trustee. On January 17, 2006 the Bankruptcy Court denied the motion.

On January 25, 2006 the Bankruptcy Court went forward with the confirmation hearing on the Chapter 13 plan. At the conclusion of the hearing the Bankruptcy Court ruled from the bench that the previous award of the disputed administrative claims is "binding" on the Bankruptcy Court, and, despite the fact that Petitioners had never missed a Plan payment, the Bankruptcy Court determined Petitioners were "unable to file a Plan that is susceptible of confirmation." The Bankruptcy Court denied confirmation without leave to amend.

On February 9, 2006 Petitioners filed a timely Motion To Stay and Reconsider Order Denying Confirmation Without Leave to Amend. On March 9, 2006 the Bankruptcy Court denied said motion.

On March 17, 2006 Petitioners filed in the Bankruptcy Court a Motion For Stay of Conversion To Chapter 7 pending the outcome of the appeal of the award of the administrative claims. On March 20, 2006, without ruling on said motion, the Bankruptcy Court issued an Order Converting Case from Chapter 13 to Chapter 7. Petitioners had never missed a Chapter 13

plan payment nor missed a payment to their secured creditors after they filed a Chapter 13 Plan in November 2004 through March 2006 when their case was converted to Chapter 7. Petitioners paid approximately $53,000.00 into their Chapter 13 Plan during this period.

Also on March 20, 2006 Petitioners filed a Notice of Appeal Of Order Denying Confirmation Without Leave To Amend. That appeal was docketed in the District Court as *Beverly Byrd et. al., v. Timothy Branigan et al.*, Case No. AW 06-895.

On March 30, 2006 Petitioners filed in the Bankruptcy Court a Motion To Reconsider And Stay Order Converting Case, seeking to continue to make their Chapter 13 payments as they had done since November 23, 2004 pending the outcome of their District Court appeal in Case No. AW 05-2389.

On April 7, 2006 the District Court in Case No. AW 05-2389 dismissed Petitioners' appeal of the appointment of the Chapter 11 trustee and the award of Respondents' administrative claims. Regarding Petitioner's right to challenge the appointment of the Chapter 11 trustee, the District Court stated "the same issue has been appealed to this Court before Judge Motz, who ruled that although the Byrds reserved the right to challenge the propriety of the Chapter 11 trustee's fees, the issue of his appointment had already become moot. . . . Because this issue has already been decided, this Court sees no reason to revisit it now." Regarding Petitioners' right to challenge the Bankruptcy Court's award of Respondents' administrative claims the District Court held "[b]ecause

the underlying proceeding has not been concluded, and because the final amounts of the compensation awards remain undetermined, the Bankruptcy Court's orders granting administrative expenses are interlocutory. As such this Court lacks jurisdiction to review them at the present time."

On April 17, 2006 Petitioners filed in the District Court a motion for reconsideration of its April 7, 2006 order dismissing their appeal. Petitioners argued the District Court failed to recognize that Judge Motz's April 14, 2005 order reserved to Petitioners the right to challenge the appointment of the Chapter 11 trustee prior to consideration of the confirmation of the Petitioners' Chapter 13 Plan. Petitioners also filed a motion pursuant to Fed. R. Civ. P. 60(b) for relief from the Order of District Court entered April 14, 2005 in Case No. JFM-04-3312 asking Judge Motz for affirmation that his April 14, 2005 Order meant precisely what it said, i.e., that all parties agreed the Bankruptcy Court would revisit the issue of the appointment of the Chapter 11 trustee when deciding the propriety of the administrative claims resulting from that appointment - and that all of this would take place as part of the process of determining whether a Chapter 13 plan could be confirmed.

On May 9, 2006 Judge Motz summarily denied Petitioners' requested relief without comment.

On May 16, 2006, Respondents filed a motion asking the Bankruptcy Court to compel the former Chapter 13 Trustee to turn over to Respondent Johnson all moneys paid by Petitioners under their denied Chapter 13 plan.

On August 22, 2006 in Case No. 05-2389, U. S. District Court Judge Alexander Williams, citing Judge Motz's May 9, 2006 denial of Petitioners' requested relief without explanation, denied their April 17, 2006 motion for reconsideration.

On September 18, 2006 the Bankruptcy Court granted Respondents' motion to compel the Chapter 13 Trustee to turn over to Respondent Johnson the money paid by Petitioners under their Chapter 13 plan.

On September 21, 2006 Petitioners appealed to the Fourth Circuit Court of Appeals from the District Court's dismissal of the appeal and its denial of Petitioners' motion for reconsideration in District Court Case No. 05-2389. The appeal was docketed as *In re: Beverly S. Byrd ; Ralph T. Byrd*, docket number 06-2042.

On September 28, 2006 Petitioners appealed to the District Court from the Bankruptcy Court's order compelling the Chapter 13 Trustee to turn over to Respondent Johnson the money paid by the Petitioners under their Chapter 13 plan. That appeal was docketed in the District Court as *Beverly Byrd et. al. v. Gregory P. Johnson*, Case No. 06-2704 AW. On that same day, Petitioners also filed a motion in the District Court for a stay pending appeal to the Fourth Circuit Court of Appeals.

On October 24, 2006 Respondents filed in the Bankruptcy Court a Motion To Compel Production of Documents and Information.

On November 29, 2006 the District Court dismissed the appeal of the denial of confirmation of the Chapter 13 plan and conversion to Chapter 7 that was docketed under Case No. 06-895 as *Beverly Byrd et. al., v. Timothy Branigan et al.*, ruling that the District Court lacked jurisdiction due to the lack of finality of the orders in question.

On December 1, 2006 the Bankruptcy Court held a hearing on Respondents' Motion To Compel Production of Documents and Information as well a motion seeking, inter alia, immediately to remove Petitioners from their property and make permanent alterations to the property - all prior to any final resolution of the issues on appeal and prior to the property being sold.

The Bankruptcy Court granted the motion from the bench, ordering Petitioners to vacate the property on or before January 31, 2007. The Bankruptcy Court also ordered Petitioners, over their objections, to produce certain documents and provide other information to Respondents.

The Bankruptcy Court also authorized Respondents, with the assistance of United States Marshals, to remove Petitioners from their home on January 31, 2007 and destroy any remaining personal property.

On December 6, 2006 the U.S. District Court denied Petitioners' Motion For A Stay Pending Appeal in Case No 05-2389AW. The District Court implied that it denied the stay in order to moot the appeal and end Petitioners' continued challenge to Respondents' efforts

to liquidate Petitioners' property because, according to the District Court, said challenge "reeks of flagrant abuse" of the judicial process. The District Court stressed throughout the Memorandum Opinion and reiterated in its conclusion "[w]hat leaps out at this Court is the barrage of pleadings filed by Appellants and the statements and inferences drawn by the Bankruptcy Court suggesting that Appellants' efforts have been designed to frustrate the judicial process."

On December 8, 2006 the Bankruptcy Court entered an Order Granting Trustee's Motion to Compel Production of Documents and Information. Said Order required the Debtors to produce certain financial records to Respondents no later than January 30, 2007 or face sanctions from the Court.

On December 11, 2006 the Bankruptcy Court entered a written Order Granting The Motion Of Chapter 7 Trustee To Authorize The Removal Of Persons And Property From 4901 Sundown Road, Laytonsville, MD And Issuing Writ Of Assistance.

On December 18, 2006 Petitioners asked the Bankruptcy Court to reconsider its Order Granting Trustee' Motion To Compel Production of Documents and Information explaining that Maryland's Court of Appeals determined on December 14, 2006 that it was "desirable and in the public interest" to accept certiorari in the case of *Sheri Jackson v. Pasadena Receivables* No. 106 September Term 2006 wherein Petitioner represented the appellant Sheri Jackson whose Brief was due on January 15, 2007, Reply Brief due on February 26, 2007; and Oral Argument scheduled for March 8, 2007. App. 159. Petitioner

explained that Maryland's Court of Appeals would be considering many of the same issues pending before the Bankruptcy Court in Petitioners' case relative to Platinum's claims which the Fourth Circuit had characterized as "frivolous" or "hopeless" in *In re: Byrd*, 357 F.3d. 433 at 441. Therefore Petitioners asked for an extension of time to comply with the Bankruptcy Court's order to produce documents. App. 158-160.

For the same reasons, on December 21, 2006 Petitioners also asked the Bankruptcy Court to reconsider its order authorizing Respondents to remove Petitioners from their property. Petitioners also explained that no process had been issued at all to their sons who also lived at Petitioners' property and had belongings there. App. 148. However, the Respondents strenuously objected to any such extension of time.

On December 22, 2006 the Bankruptcy Court denied Petitioners' Motion to Reconsider Order Granting Trustee's Motion to Compel Production of Documents and Information. App. 146. On December 28, 2006 the Bankruptcy Court denied Petitioners' motion to reconsider its order authorizing the removal of Petitioners from the property, stating, inter alia, "the court's primary interest is in protecting and administering the estate, not Mr Byrd's post-petition law practice." App. 143. The Bankruptcy Court also stated Petitioners "lacked standing" to assert the rights of their "adult sons" who could represent themselves. App. 145. However Petitioners' youngest son, still away at Yale University, would not turn twenty one until June 16, 2007.

On January 8, 2007 the District Court dismissed Petitioners' appeal in Case No. 06-2704 AW on the grounds that the appeal had not been diligently prosecuted.

On January 12, 2007 Petitioners sought from the Fourth Circuit Court of Appeals a stay pending appeal in Case No. 06-2042 wherein Petitioners had sought review of the very appointment of a Chapter 11 trustee and the award of Respondents' administrative claims. Respondents vigorously opposed the stay, citing, among other things, the language in the District Court's December 6, 2006 denial of Petitioners' Motion For A Stay Pending Appeal that Petitioners' continued challenge to the liquidation of their home "reeks of flagrant abuse" suggesting that Petitioners' efforts "have been designed to frustrate the judicial process."

On January 24, 2007 the Fourth Circuit denied Petitioners' motion for a stay pending appeal in Case No. 06-2042 without comment or explanation.

Despite Petitioners' best efforts to remove themselves and all their personal property from their home and place of business by January 31, 2007 they were still in the process of doing so when on February 6, 2007 Respondent James Hoffman and his agents as well as U.S. Marshals came to the Petitioners' home and place of business while Petitioners were still removing their property and began throwing it into dumpsters. Said property included personal property belonging to Petitioners and their three sons that was priceless to them.

On February 8, 2007 Petitioners appealed to the Fourth Circuit Court of Appeals from the District Court's dismissal of their appeal in Case No. 06- 2704 AW wherein Petitioners had sought review of the Bankruptcy Court's order compelling the Chapter 13 Trustee to turn over to Respondent Johnson the money the Petitioners had paid under their Chapter 13 plan. That appeal was docketed in the Fourth Circuit as *In re: Beverly S. Byrd et al.* Case No. 07-1126. Also on February 8, 2007 Petitioners appealed to the Fourth Circuit from the District Court's dismissal of their appeal in Case No. 06-895 wherein Petitioners sought review of the denial of confirmation of their Chapter 13 plan and conversion to Chapter 7. That appeal was docketed in the Fourth Circuit as *In re: Beverly S. Byrd et al.* Case No. 07-1138.

On February 15, 2007 Respondents filed a Motion for Contempt and for Award of Monetary Sanctions in response to Petitioners' failure to produce documents and information as the Bankruptcy Court had ordered by December 31, 2006.

On March 23, 2007 Respondents filed a motion to sell Petitioners' home free and clear of all liens and interests. On March 27, 2007 the Bankruptcy Court set a deadline of April 12, 2007 for objections to the motion.

On April 2, 2007 Petitioners produced the ordered documents and information and also filed a Motion To Strike for Lack of Service And Mootness Trustee's Motion To Hold Debtors In Contempt.

On April 12, 2007 Petitioners filed their objections to the sale of their home. That same day

Petitioner received a letter from the Attorney Grievance Commission of Maryland which revealed Respondents had been engaging in extensive communications with Maryland's Attorney Grievance Commission over a period of several months seeking Petitioner's disbarment.

On April 23, 2007 Petitioner responded to the charges by filing in the Circuit Court for Montgomery County Maryland a complaint against Respondents and others alleging abuse of process and improper acts outside Respondents' duties to the bankruptcy estate. That same day the Bankruptcy Court held a hearing and granted Respondents' motion to sell Petitioners' property over their objections.

On April 25, 2007 the Court entered an Order Authorizing Trustee To Enter Into Sales Agreement And Approving Sale Of Certain Real Property Free And Clear Of All Liens, Claims, Interests And Encumbrances over the objections of the Debtors. In the Order the Court took the unusual step of making the Order immediately effective and not subject to the usual ten day automatic stay.

On May 7, 2007 Petitioners timely appealed the Bankruptcy Court's April 25, 2007 order to the District Court in Case No. 07-1421 docketed as *Beverly Byrd et. al, v. James Hoffman et al.* The same day, Respondents filed an Emergency Motion For Sanctions for Violation of the Automatic Stay and an Emergency Motion to Shorten Time to Respond. The Petitioners opposed the motion.

On May 18, 2007, without holding any hearing, the Bankruptcy Court granted most of the relief Respondents requested and issued an Order Granting in Part Emergency Motion For Relief from the Automatic Stay, Enjoining Respondents and Declaring Complaint Void in Part. Said order declared portions of Petitioners' state court complaint void as violating the automatic stay and enjoined the Petitioners from pursuing any action against Respondents without first seeking leave of the Bankruptcy Court. App.102.

On May 24, 2007 Petitioners filed an Emergency Motion for Stay Pending Appeal of Order Authorizing Trustee to Enter into Sales Agreement and Approving Sale of Certain Real Property Free and Clear Due to Newly Discovered Evidence. That Motion directed the Bankruptcy Court's attention to new correspondence Petitioner received from the Attorney Grievance Commission of Maryland. Petitioners contended that the newly discovered evidence demonstrated Respondents had been acting in bad faith and with improper intent in their efforts to sell Petitioners' home.

That same day, without a hearing or response from opposing counsel, the Bankruptcy Court sua sponte denied the motion for the stay pending appeal.

On May 29, 2007 Petitioners amended their state court complaint in a manner they thought was consistent with the Bankruptcy Court's May 18, 2007 order.

On June 1, 2007 Respondents filed an Emergency Motion for Relief due To Flagrant Violations Of This Court's Order Entered May 18, 2007.

On June 4, 2007 Petitioners asked the Bankruptcy Court to reconsider its Order Granting Trustee's Emergency Motion for Relief from the Automatic Stay, Enjoining Respondents and Declaring Complaint Void. On June 7, 2007 the Bankruptcy Court denied the motion.

On June 14, 2007 Petitioners appealed the Bankruptcy Court's May 24, 2007 Amended Order Granting In Part Trustee's Emergency Motion For Relief Due To Violations Of Automatic Stay, Enjoining Respondents And Declaring Complaint Void In Part and from the June 7, 2007 Order Denying Reconsideration to the District Court. That appeal was docketed in the U.S. District Court as *Beverly S. Byrd et. al. v. James M. Hoffman, et al.* Case No. 07-1730 AW.

On June 15, 2007 Petitioners voluntarily dismissed their appeal of the Bankruptcy Order authorizing the sale of their home as moot in the absence of a stay of the order pending appeal.

On June 28, 2007 the U.S. Court of Appeals for the Fourth Circuit issued its Opinion in *Beverly S. Byrd et al., v. Gregory Johnson, et al.* Case No. 06-2042.

The Opinion states, *inter alia*,:

> We have reviewed the record and the briefs filed by the parties and we affirm the dismissal order

> substantially on the reasoning of the district court. ... However, we note that, contrary to the district court's conclusion, the issue of the appointment of the Chapter 11 trustee had not been decided in Ralph Byrd's prior appeal; rather, the district court dismissed the prior appeal as moot, with the understanding that Byrd's challenge to the propriety of the trustee's appointment would be presented to the bankruptcy court in the context of whether fees should be awarded.
>
> We agree, however, with the district court's dismissal of this portion of the appeal., on the modified basis that it is interlocutory, rather than based on res judicata.

On July 6, 2007 Petitioners filed a Motion For A Stay Pending Appeal of the Bankruptcy Court's Amended Order Granting In Part Trustee's Emergency Motion For Relief Due To Violations Of Automatic Stay, Enjoining Respondents And Declaring Complaint Void In Part and from the June 7, 2007 Order Denying Reconsideration.

Also on July 6, 2007 Petitioners filed a Motion To Stay Consideration And Payment Of all Administrative Fees And Expenses Resulting From The Appointment Of The Chapter 11 Trustee Pending Review Of The Propriety Of The Trustee's Appointment.

On July 11, 2007 Petitioners filed in the Fourth Circuit Court of Appeals a Petition For Rehearing stating that "waiting until the end of a bankruptcy case to review the appointment of the Chapter 11 trustee and the deprivation of the debtor in possession's 120

exclusive period defeats the purpose of 11 U.S.C.A. 1121(b) and 28 U.S.C.A 158(a)(2). It would permit the harms and expenses to the debtor and to the estate to accumulate unabated until the harms can no longer be corrected by the mere denial of the Trustee's fees and expenses at the very end of the fundamentally flawed proceedings."

On July 13, 2007 the Bankruptcy Court *sua sponte* struck Petitioners' July 6, 2007 Motions on the grounds that the motions included Petitioners' old address instead of their new address.

Also on July 13, 2007 Petitioners moved in the Bankruptcy Court for a continuance of the hearing on Respondents' motion for sanctions scheduled for July 18, 2007. Petitioners explained that since they had a brief due in the District Court on July 17, 2007 as well as briefs and joint appendices in two separate appeals due in the Fourth Circuit on July 19, 2007 they would need additional time to prepare for the July 18, 2007 hearing on Respondents' motion for sanctions.

The very same day, on July 13, 2007 the Bankruptcy Court sua sponte denied Petitioners' motion for a continuance of the July 18, 2007 hearing on sanctions.

On July 18, 2007 the Bankruptcy Court held the hearing on Respondents' Motion(s) For Contempt And For Award of Monetary Sanctions. Petitioners did not appear.

On August 22, 2007 the Fourth Circuit denied Petitioners' Petition For Rehearing in Case No. 06-2042 without comment.

On September 27, 2007 the Bankruptcy Court issued its Memorandum Opinion Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order and its Order Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order. Said order, in pertinent part ordered "that the Trustee is awarded sanctions against the Debtors in the amount of $17,293 to compensate the Trustee for his efforts to obtain documents and information and for the Debtors' violation of 11 U.S.C. Sec. 521 and the Production Order." App. 23.

Also on September 27, 2007 the Bankruptcy Court issued its Memorandum Opinion And Order Finding The Respondents In Contempt And Awarding Sanctions For Violations Of The Automatic Stay, The Barton Doctrine And The Injunction Order. That order found Petitioners as well as their three sons in contempt of court; awarded Respondents monetary sanctions in the amount of $14,281.45 against Petitioners and their three sons for violating the automatic stay and the Barton Doctrine; awarded Respondents monetary sanctions in the amount of $7,895.55 against Petitioners and their three sons for violating the injunction order; awarding Respondents punitive damages in the amount of $23,686.50 against Petitioners; and denying Petitioners' discharge. App. 36, 39-40, 67-73.

On October 9, 2007 Petitioners filed a Notice of Appeal to the U.S. District Court of the Order Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order and its Order Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order.

On October 16, 2007 Petitioners filed a Third Amended Complaint For Abuse Of Process Civil Conspiracy And Demand for Jury Trial which, *inter alia*, dropped all claims against the Respondents and deleted all plaintiffs other than Petitioner Ralph Byrd.

On October 22, 2007 Petitioners filed their Notice of Appeal to the District Court from the Bankruptcy Court's September 27, 2007 order finding them in contempt and awarding sanctions for violations of the automatic stay, the Barton Doctrine and the Injunction Order.

On November 19, 2007 in Case No. 07- 1336, the Fourth Circuit reversed, vacated and remanded the District Court's order dismissing, for failure to prosecute, their appeal of the Bankruptcy Court's order requiring the Chapter 13 Trustee to turn over the $53,000 paid by Petitioners into Petitioner Beverly Byrd's Chapter 13 plan.

On December 6, 2007 the Bankruptcy Court, *sua sponte*, issued an Order To Show Cause Why Debtors Should Not Be Denied Standing To Participate In Their Bankruptcy Case Because the Case Is Administratively

Insolvent. On December 20, 2007 Petitioners filed their Response To Order To Show Cause.

On March 31, 2008, in Case No. AW 07-1730 the District Court affirmed the Bankruptcy Court's May 18, 2007 Order Granting in Part Emergency Motion For Relief from the Automatic Stay, Enjoining Respondents and Declaring Complaint Void in Part. App. 81.

On April 30, 2008 Petitioners appealed from that decision to the Fourth Circuit Court of Appeals, docketed as Case No. 08-1521.

On July 30, 2008 the District Court affirmed the September 27, 2007 Order of the Bankruptcy Court Awarding Sanctions For Violations Of The Automatic Stay, The Barton Doctrine And The Injunction Order. App. 14. Petitioners timely appealed to the Fourth Circuit Court of Appeals where the appeal was docketed as *Beverly S. Byrd et al. v. James M. Hoffman et al.* Case No 08-1989.

Also on July 30, 2008 the District Court complied with the Fourth Circuit's mandate in Case No. 07-1336 and reopened the appeal of the Bankruptcy Court's order compelling the Chapter 13 Trustee to turn over to the Chapter 7 Trustee all the money paid by Petitioners under their Chapter 13 plan.

On July 31, 2008 the United States District Court for the District of Maryland affirmed the September 27, 2007 Order of the Bankruptcy Court Awarding Sanctions For The Debtors' Failure To Produce Documents and Finding The Debtors In

Contempt For Violating The Production Order. App. 6. Petitioners timely appealed to the Fourth Circuit Court of Appeals where it was docketed as *Beverly S. Byrd et al. v. James M. Hoffman et al.* Case No 08-1988.

Also on July 31, 2008 Respondents appeared in the Circuit Court for Montgomery County Maryland and testified Petitioner Ralph Byrd had engaged in conduct during the bankruptcy proceedings that warranted his disbarment including being held in civil contempt.

On April 14, 2009 Petitioner was disbarred by the Court of Appeals of Maryland.

On July 10, 2009 the Fourth Circuit issued a Rule 34 Notice in Case No. 08-1521. On July 20, 2009 Petitioners responded and strenuously requested the opportunity to argue their appeal in Case No. 08-1521.

On August 13, 2009 in Case No. 08-1521 the Fourth Circuit Court of Appeals issued its unpublished per curiam opinion denying Petitioners' request for oral argument and affirming the decision of the Bankruptcy Court "for the reasons stated by the District Court." App. 78.

On November 19, 2009 in consolidated Cases Nos. 08-1988 and 08-1989 the Fourth Circuit Court of Appeals issued its unpublished per curiam opinion affirming the decisions of the Bankruptcy Court "for the reasons stated by the District Court." App. 5.

On December 4, 2009 Petitioners requested rehearing, en banc, of the Fourth Circuit's November

19, 2009 decision in consolidated Cases 08-1988 and 1989.

On March 2, 2010 the Fourth Circuit denied said petition for rehearing. App. 172.

On March 27, 2010 Respondents filed in the Bankruptcy Court their Final Account showing a total of approximately $853,000.00 taken from Petitioners' estate with more than $351,000.00 paid to Respondents and nothing paid to unsecured creditors.

On May 3, 2010 the Bankruptcy Court approved Respondents' Final Account and closed the case.

On May 17, 2010 Petitioners timely appealed from said order and paid the necessary fee. However, on June 17, 2010 the Clerk of the Bankruptcy Court issued to Petitioners a "Notice of Filing In A Closed Case" which stated Petitioners' bankruptcy case was closed and it was therefore necessary for Petitioners to move in the Bankruptcy Court to re-open the case before Petitioners could seek to appeal the order closing the case. The Notice was in conflict with the District Court's decision in Case No. 05-2389, upheld by the Fourth Circuit in Case No. 06-2042, which ruled Petitioners' exercise of their right to appeal the Bankruptcy Court's appointment of a Chapter 11 trustee and award Respondents' administrative claims was premature "[b]ecause the underlying proceeding has not been concluded."

Accordingly, on June 22, 2010, Petitioner sent said Bankruptcy Court Clerk a letter inquiring whether the Notice had been sent in error.

On June 14, 2010, pursuant to Supreme Court Rule 8, the Clerk of the United States Supreme Court issued to Petitioner a Rule To Show Cause why he should not be disbarred from the practice of law in this Court in reciprocity with Petitioner's disbarment by Maryland's Court of Appeals. Petitioner received said Order To Show Cause on June 19, 2010.

On June 28, 2010 the Clerk of the Bankruptcy Court replied to Petitioners' June 22, 2010 letter by stating the case had been closed and it would be necessary for Petitioners to file a Motion To Reopen Case and pay an additional fee of $260.00.

On June 29, 2010, the Fourth Circuit Court of Appeals issued its decision in Case No. 09-1522, which was the appeal of the District Court's decision affirming the Bankruptcy Court order requiring the Chapter 13 Trustee to turn over to Respondents the approximately $53,000.00 Petitioners had paid into their repayment plan. Once again, the Fourth Circuit affirmed the decisions below "for the reasons stated by the District Court." However, this time the Fourth Circuit did so without Respondents ever filing a brief. Nor did the Clerk of the Fourth Circuit Court of Appeals notify the parties whether oral argument would be allowed as required by Federal Rule of Appellate Procedure 34(b).

On July 29, 2010 Petitioner obtained from Cynthia Rapp, Deputy Clerk of the Supreme Court an extension until Monday, August 2, 2010 to file his Response To The Supreme Court's Rule To Show Cause why he should not be disbarred from the practice of law in the Supreme Court.

REASONS FOR GRANTING THE PETITION

Contrary to the view of the Fourth Circuit, the District Court, and the Bankruptcy Court in this case, several circuit courts have concluded that the automatic stay is inapplicable to actions commenced by the bankrupt party. *See Crosby v. Monroe County* 394 F.3d 1328 (11th Cir. 2004); *Victor Foods, Inc. v. Crossroads Economic Development of St. Charles County, Inc.*, 977 F.2d 1224 (8th Cir. 1992) *Carley Capital Group v. Fireman's Fund Insurance Co.*, 889 F.2d 1126, 1127 (D.C.Cir.1989); *Martin-Trigona v. Champion Federal Savings and Loan Ass'n*, 892 F.2d 575 (7th Cir.1989); *In re Berry Estates*, 812 F.2d 67, 71 (2d Cir.1987); *Freeman v. Commissioner of Internal Revenue*, 799 F.2d 1091, 1092-93 (5th Cir.1986); *Cathey v. Johns-Manville Sales Corporation*, 711 F.2d 60, 61 (6th Cir.1983); *Association of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir.1982). Petitioners respectfully suggest this Court may wish to settle the controversy.

Even if the automatic stay applies to acts of the debtor, in this case the Fourth Circuit affirmed the Bankruptcy Court's ruling that Petitioners' unserved, unremoved state court complaint against Respondents alleging improper acts outside their duties to the bankruptcy estate and abuse of process and requesting a constructive trust for property of the estate as a possible remedy at the discretion of the state court was an "act to exercise control of estate property" proscribed by 11 U.S.C. Sec 362(a)3. That ruling is in apparent conflict with this Court's ruling, albeit in the context of whether governmental regulatory acts were stayed, that the mere possibility of exercising control at

some point in the future is not an "act to exercise control of estate property." *Board of Governors v. MCorp Financial, Inc.*, 502 U.S. 32, 39, 112 S.Ct. 459, 464, 116 L.Ed.2d 358 (1991); *In re National Cattle Congress*, 179 B.R. 588 (Bkrtcy N.D. Iowa 1995). *See also U.S. v. Inslaw, Inc.* 932 F.2d 1467, (D.C. Cir.,1991) (citing *In re Knightsbridge Dev. Co.* 884 F. 2d 145 (4th Cir. 1989) holding that acts, such as the filing of a lis pendens, which do not create a lien do not violate the automatic stay even though they alert prospective buyers to a hazard and may thereby diminish the value of estate property.) Petitioners maintain their state court complaint requesting a constructive trust for property of the estate as a possible remedy at the discretion of the state court is akin to such a lis pendens because it did not create a lien on the property. Accordingly, Petitioners respectfully suggest this Court may wish to clarify what constitutes an "act to exercise control" within the meaning of 11 U.S.C. 362(a)3.

In addition, this Petition presents a unique opportunity for this Court to visit the rule articulated in *Barton v. Barbour* 104 U.S. 126, 127 (1881) that before suit can be brought against a receiver, leave of the court that appointed the receiver must be obtained. While circuit courts have extended "the Barton Doctrine" to lawsuits against bankruptcy trustees, the Supreme Court has never expressly construed the Barton Doctrine as it applies in bankruptcy cases nor specified the procedures for the Bankruptcy Court's enforcement of the Barton Doctrine. This Petition poses the question whether the Barton Doctrine authorized the Bankruptcy Court, without a hearing, (App. 106) to assume jurisdiction over, declare void, and enjoin

Petitioners from prosecuting their unremoved unserved state court action on the grounds that Petitioners' state court complaint against Respondents alleging, *inter alia*, improper acts outside their duties to the bankruptcy estate and abuse of process required leave of the Bankruptcy Court that appointed them.

Furthermore, both the District Court and the Fourth Circuit affirmed the Bankruptcy Court's reliance upon *Marrama v. Citizens' Bank* 549 U.S. 365, 127 Sup Ct 1105, 1112; 166 L.Ed. 2d 956 (2007) to declare Petitioners in civil contempt and deny the Petitioners' discharge (App. 71) This Court, in *Marrama*, provided no other criteria than "atypicality" or "extraordinary circumstances" to identify the kind of bad faith conduct that might justify a Bankruptcy Court's exercise of its authority under 11 U.S.C. Sec. 105(a) or its inherent power to forego the normal procedures for denying conversion of a debtor's case from Chapter 7 to Chapter 13. This Court's five to four split in *Marrama* suggests uncertainty over the rules governing a Bankruptcy Court's exercise of such authority. Therefore, since this Court has already recognized the matter of the exercise of 11 U.S.C. Sec. 105(a) authority to be "certworthy" in the context of foregoing the usual procedures for denying conversion of a debtor's case from Chapter 7 to Chapter 13, Petitioners respectfully suggest the Court may wish to take the opportunity presented by this Petition to clarify further whether and when a Bankruptcy Court may use such authority to forego the usual adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001 to consider the denial of a debtor's discharge. The decisions in this case are in conflict with the decision of the Bankruptcy Appellate Panel for the

Ninth Circuit in *In re Yadidi*, 274 B.R. 843 9th Cir.BAP (2002) which held a Bankruptcy Court may not exercise its authority under 11 U.S.C. Sec 105(a) without an explicit showing why the use of such authority is "necessary and appropriate."

Finally, the Fourth Circuit has affirmed the judgments of the Bankruptcy Court and District Court in the last four appeals in this case by per curiam opinions which contain no other explanation than "for the reasons stated by the District Court." No oral argument was allowed in any of Petitioners' appeals in either the District Court or the Fourth Circuit despite Petitioners' express request for same. On June 29, 2010, in its most recent decision in this case, the Fourth Circuit issued its per curiam in Case No. 09-1533, which was the appeal of the District Court's decision affirming the Bankruptcy Court order requiring the Chapter 13 Trustee to turn over to Respondents the approximately $53,000.00 Petitioners had paid into their repayment plan. Once again, the Fourth Circuit affirmed the decisions below "for the reasons stated by the District Court." However, this time the Fourth Circuit did so without Respondents ever filing a brief. Nor did the Clerk of the Fourth Circuit Court of Appeals notify the parties whether oral argument would be allowed as required by Federal Rule of Appellate Procedure 34(b). Most recently, Petitioners' timely notice of appeal of the Bankruptcy Court's order closing the case was met with a notice from the Bankruptcy Court that a motion to reopen the case would have to be filed first in the Bankruptcy Court to obtain permission to appeal the very order closing the case.

Petitioners respectfully submit the lower courts' decisions in this bankruptcy case, exemplified by the civil contempt sanctions, represent such a departure from the accepted and usual course of judicial proceedings as to call for the exercise of the Supreme Court's supervisory power. This Court has held "[t]he exercise of supervisory authority is especially appropriate in the determination of the procedures to be employed by courts to enforce their orders, a subject that directly concerns the functioning of the Judiciary." *Young v. U.S. ex rel. Vuitton et Fils S.A.* 481 U.S. 787, 809, 107 S.Ct. 2124 (1987).

This Court's last in-depth consideration of civil contempt power was in *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552 (1994). There the Court recognized:

> [t]he contempt power also uniquely is " 'liable to abuse.' " quoting *Ex parte Terry*, 128 U.S. 289, 313, 9 S.Ct. 77, 82-83, 32 L.Ed. 405 (1888). Unlike most areas of law, where a legislature defines both the sanctionable conduct and the penalty to be imposed, civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct. Contumacy "often strikes at the most vulnerable and human qualities of a judge's temperament," *Bloom*, 391U.S., at 202, 88 S.Ct., at 1482, and its fusion of legislative, executive, and judicial powers "summons forth ... the prospect of 'the most tyrannical licentiousness,' "

Id. at 831.

Accordingly, Petitioners respectfully request the Supreme Court to exercise its supervisory authority and construe the propriety of the Bankruptcy Court's civil contempt sanctions imposed upon the Petitioners in this case even though the Respondents were already fully compensated for their alleged damages. App. 23, 36, 39-40, 67-73. Under such circumstances, the Bankruptcy Court's additional formal finding of "civil contempt" along with the denial of Petitioners' discharge was punitive rather than coercive or compensatory. *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829, 114 S.Ct. 2552 (1994). This is especially true when the Bankruptcy Court had been made aware of Respondents' ongoing efforts to seek Petitioner Ralph Byrd's disbarment and knew the Bankruptcy Court's declaration of his civil contempt would be used toward that goal.

Bankruptcy filings are numerous and recurring. According to the most recent government statistics, a total of 1,042,933 bankruptcies were filed in 2008 of which 760 were involuntary (http: //www. uscourts. gov/ uscourts/ Statistics/ Judicial Facts And Figures /2008/Table702.pdf). The relative rarity of involuntary proceedings, alone, should be reason to subject them to additional scrutiny. Since review of decisions by a Bankruptcy Court requires an initial appeal to a District Court or Bankruptcy Appellate Panel prior to any appeal to a Circuit Court, and since bankruptcy litigation, by its very nature, involves at least one party who is financially distressed, Petitioners respectfully urge this Court not to feel compelled to wait as long for bankruptcy related issues to "percolate" in the lower courts as the Court might wait when the issues arise

outside the bankruptcy process. Too much harm can befall too many debtors in bankruptcy in the meantime.

CONCLUSION

For all the foregoing reasons the Petitioners respectfully request that this Court grant review of this matter.

Respectfully submitted,

Ralph T. Byrd, and Beverly S. Byrd, Pro Se
P.O. Box 5278
Laytonsville Maryland 20882
(301) 774-3117

11/19/2009 (32-1)
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1988 (L)
(8:07-cv-02960-AW)
(04-35620)

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors

BEVERLY BYRD; RALPH T. BYRD,Plaintiffs - Appellants

v.

JAMES M. HOFFMAN, Defendant - Appellee

and

GREGORY P. JOHNSON, Trustee

No. 08-1989
(8:07-cv-03049-AW)
(04-35620-TJC)

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs - Appellants

v.

JAMES M. HOFFMAN, Defendant - Appellee

and

GREGORY P. JOHNSON, Trustee

J U D G M E N T

In accordance with the decision of this Court, the judgments of the District Court are affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

11/19/2009 (31)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1988

In Re: BEVERLY BYRD; RALPH T. BYRD,
Debtors.

- - - - - - - - - - - - - - - - - - -

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs – Appellants,

v.

JAMES M. HOFFMAN, Defendant – Appellee,

and

GREGORY P. JOHNSON, Trustee.

No. 08-1989

In Re: BEVERLY BYRD; RALPH T. BYRD,
Debtors.

- - - - - - - - - - - - - - - - - - -

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs – Appellants,

v.

JAMES M. HOFFMAN, Defendant – Appellee,

and

GREGORY P. JOHNSON, Trustee.

Appeals from the United States District Court for the District
of Maryland, at Greenbelt. Alexander Williams, Jr., District
Judge. (8:07-cv-02960-AW; 8:07-cv-03049-AW)

Submitted: November 17, 2009 Decided: November 19, 2009

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Ralph T. Byrd, Laytonsville, Maryland, for Appellants. Stephen A. Metz, John D. Sadler, SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A., Potomac, Maryland; James M. Hoffman, OFFIT KURMAN,

Bethesda, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Beverly and Ralph Byrd appeal from the district court's orders affirming the bankruptcy court's orders finding them in contempt and imposing sanctions against them for (1) failing to timely to produce documents and information as ordered by the bankruptcy court and (2) willfully violating the automatic stay and the Barton Doctrine,* and the injunction order issued by the bankruptcy court. We have reviewed the record on appeal and the briefs filed by the parties and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Byrd v. Hoffman, Nos. 8:07-cv-02960-AW; 8:07-cv-03049-AW (D. Md., July 31, 2008; filed July 30; entered July 31, 2008). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

* Barton v. Barbour, 104 U.S. 126, 127 (1881) (requiring that, "before suit is brought against a receiver, leave of the court by which he was appointed must be obtained").

Civil Action No. AW-07-2960
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT
RALPH BYRD, et al., Appellants,

v.

JAMES M. HOFFMAN, et al.,
Appellees.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, IT IS this 31st day of July, 2008 by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the September 27, 2007 Order of the Bankruptcy Court is hereby AFFIRMED;
2. That the Clerk of the Court CLOSE this case; AND
3. That the Clerk of the Court transmit a copy of this Memorandum Opinion and Order to all counsel of record.

/s/
Alexander Williams, Jr.
United States District Judge

7/31/2008 (8)
Civil Action No. AW 07 2960
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT

RALPH BYRD, et al., Appellants,

v.

JAMES M. HOFFMAN, et al., Appellees.

MEMORANDUM OPINION

This appeal arises from the September 27, 2007 Order of Thomas Catliota, United States Bankruptcy Court Judge for the District of Maryland (the "Bankruptcy Court"), holding in contempt and awarding sanctions against debtors Ralph T. Byrd and Beverly S. Byrd (collectively, the "Appellants"). The appeal has been fully briefed, and no hearing is deemed necessary. See Local Rule 105.6 (D. Md. 2008). For the reasons explained below, the Court AFFIRMS the Order and Rulings of the Bankruptcy Court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellants Beverly Byrd and Ralph Byrd are not unknown to this Court, having repeatedly filed appeals to the District Court and to the Fourth Circuit related to their bankruptcy matter. The following facts are those pertinent to this appeal. Appellants are debtors in a Chapter 7 bankruptcy proceeding. On April 19, 2006, the Trustee mailed a formal request to the debtors to produce documents and information

regarding their estate. After several failed attempts to obtain this information, the Trustee filed a Motion to Compel on October 24, 2006. At a hearing on the motion, Appellants stated that they had produced the information but proffered no evidence to support their claim. The Bankruptcy Court announced at the hearing that the motion would be granted. On December 8, 2006, the court issued the Production Order, giving Appellants until January 30, 2007, to comply with the Production Order.

Appellants sent a letter on January 30, 2007, stating they could not find the information because it was "misplaced during the course of moving." The Trustee subsequently filed a Contempt Motion on February 15, 2007. The court scheduled a hearing on the Contempt Motion for April 2, 2007. On the morning of the hearing, Appellants filed a response opposing the Contempt Motion and attached to the response the information requested on April 19, 2006. The court continued the hearing until April 25, 2007, to allow the Trustee time to examine the attachments. On April 25, 2007, the Trustee testified that the information was responsive to the original request but stated that Appellants offered no reason for their failure to comply with the Production Order. This hearing was continued until July 18, 2007, and the court advised Appellants to prepare an explanation for their conduct by July 18. Neither Appellant appeared at the July 18, 2007 hearing.

STANDARD OF REVIEW

This Court reviews the legal conclusions of the Bankruptcy Court de novo, but reviews its factual

determinations for clear error. Butler v. Shaw, 72 F.3d 437, 441 (4th Cir. 1996); Three Flint Hill Ltd. Pshp. v. Prudential Ins. Co. (In re Three Flint Hill Ltd. Pshp.), 213 B.R. 292, 297 (D. Md. 1997); see also Fed. R. Bankr. P. 8013. On legal issues, this Court "must make an independent determination of the applicable law." In re Jeffrey Bigelow Design Group, Inc., 127 B.R. 580, 582 (D. Md. 1991), aff'd, 956 F.2d 479 (4th Cir. 1992). Moreover, a finding of fact is clearly erroneous "only when the reviewing court is left with the definite and firm conviction that a mistake has been committed." In re Broyles, 55 F.3d 980, 983 (4th Cir. 1995) (internal quotations omitted). Finally, the Bankruptcy Court's application of law to the facts is to be reviewed for abuse of discretion. In re Robbins, 964 F.2d 342, 354 (4th Cir. 1992) (decision to lift automatic stay).

ANALYSIS

I. Sanctions for Failure to Comply with the Production Order

The Bankruptcy Code imposes specific duties on a debtor to cooperate with the trustee. Section 521(a) provides that a "debtor shall . . . (3) if a trustee is serving in the case . . ., cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title; (4) if a trustee is serving in the case . . ., surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to the property of the estate, whether or not immunity is granted under section 344 of this title. . . ." 11 U.S.C. §521(a)(3)-(4) (2006); see also In re Stinson, 269 B.R. 172, 176 (Bankr. S.D. Ohio 2001) (sanctioning a debtor

pursuant to a Local Bankruptcy Rule after debtor failed to provide property of the estate after trustee's repeated attempts to obtain compliance). These duties permit the orderly liquidation of an estate to maximize the return to creditors, and therefore, a bankruptcy court may sanction a debtor pursuant to section 105(a) of the Bankruptcy Code for failing to cooperate with the trustee if the debtor has acted in bad faith. 11 U.S.C. § 105(a); see In re Stinson, 269 B.R. at 176; see also In re Paige, 365 B.R. 632, 637-38 (Bankr. N.D. Tex 2007) (sanctioning debtor who took control of and sold off company assets without the trustee's permission).

Here, similar to the debtors in the case of In re Paige, Appellants forced the Trustee to incur additional fees which reduced the value of the estate. Had the Appellants provided the necessary information when it was first requested in April 2006 or complied with the Production Order's deadline of January 30, 2007, the Trustee would not have pursued this matter any further. Additionally, the record supports a finding of bad faith. The Bankruptcy Court noted that this proceeding was a "charade," that Appellants willfully refused to comply with the Production Order despite "the inordinate amount of time granted" to Appellants, and that Appellants failed to provide testimony or evidence for their failure to comply.

Appellants argue that sanctions are not warranted because they requested an extension of time and the Bankruptcy Court made no finding of bad faith. The request for an extension of time is immaterial because that request was denied. Appellants had sixty days to comply with this order, and the only communication Appellants provided within this time frame was a letter

stating the information was misplaced. Furthermore, this Court has previously found the type of conduct exhibited by Appellants to have "significant 'trappings' of bad faith." See Byrd v. Hoffman, No. AW-07-1730 (D. Md. Mar. 31, 2008). Appellants' bad faith conduct forced the Trustee to incur unnecessary costs seeking the requested information, preparing and prosecuting the Motion to Compel, and preparing and prosecuting the Contempt Motion. The award of these sanctions is proper under Section 105(a), and, therefore, this Court will affirm the judgment of the Bankruptcy Court.

II. Sanctions for Contempt

A Bankruptcy Court also has the power to hold a party in civil contempt and award sanctions pursuant to 11 U.S.C. § 105(a). See In re Walters, 868 F.2d 665, 669 (4th Cir. 1989). To establish contempt, the movant must show: (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's "favor;" (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive) of such violations; and (4) that the movant suffered harm as a result. JTH Tax, Inc. v. H&R Block E. Tax Servs., 359 F.3d 699, 705 (4th Cir. 2004). The purpose of a civil contempt sanction is "remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained . . ." as a result of the contemptuous conduct. Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 822 (4th Cir. 2004) (quoting Buffington v. Baltimore County, 913 F.2d 11, 133 (4th Cir. 1990)).

In this case, the Trustee has established the elements of contempt. First, Appellants were present at the hearing where the court stated it would issue the Production Order, and they even mentioned the order in their motion for reconsideration. Second, the Production Order was in favor of the Trustee, the movant. Third, Appellants had knowledge that they violated the order as signified by their request for more time on January 30, 2007. Fourth, the Trustee incurred harm through his later efforts to obtain the requested information and the preparation and prosecution of the Contempt Motion. This is the third order Appellants have violated, and the imposition of sanctions will serve the purposes of coercing Appellants into compliance with the Bankruptcy Court's orders and compensate the Trustee for losses sustained in administering the estate.

Appellants argue that allowing the attorney's fees and costs to satisfy the harm requirement would be duplicative of the requirement to show an order was violated. To support this argument, Appellants cite RI RA Holding LLC v. RI RA, No. 99-0374, 2002 WL 31163751 (M.D.N.C. Aug. 1, 2002), for the proposition that the harm element could not be satisfied through continued trademark infringement where the court order proscribed trademark infringement. Here, however, the court order was to produce the requested information. The harm sustained by the Trustee is not the continued failure to produce this information, but rather the costs and fees reasonably necessary to obtain the information. Therefore, the Bankruptcy Court's finding that Appellants harmed the Trustee is not error, and this Court will affirm the Bankruptcy Court's finding of civil contempt.

III. Impermissible Considerations

Finally, Appellants argue that the court relied upon impermissible considerations because the Bankruptcy Court referenced "the long and protracted history" of the case and findings in previous memoranda to support its decision. Appellants argue that they are simply resisting overreaching by the Trustee, and that the court sanctioned them for Rule 11 violations without the requisite procedures. However, Appellants cite no authority which suggests that the court relied on impermissible considerations.[1]

Appellants also incorrectly state the sanctions were based on Rule 11, when in fact they were based upon provisions with in the Bankruptcy Code. See 11 U.S.C. §§105(a), 521(a). Furthermore, the "long and protracted history of this case" is a permissible consideration given the number of frivolous and dilatory motions and appeals Appellants have filed. Thus, the Court finds that the Bankruptcy Court did not rely upon any impermissible considerations.

CONCLUSION

Given Appellants' failure to succeed on any points they raise in this appeal, this Court AFFIRMS in full the decision of the Bankruptcy Court. An Order consistent with this Memorandum Opinion will follow.

July 31, 2008
/s/
Date Alexander Williams, Jr.
United States District Court Judge

Civil Action No. AW-07-3049
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT

RALPH BYRD, et al., Appellants,

v.

JAMES M. HOFFMAN, et al., Appellees.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, IT IS this 30th day of July, 2008 by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the September 27, 2007 Order of the Bankruptcy Court is hereby AFFIRMED;
2. That the Clerk of the Court CLOSE this case; AND
3. That the Clerk of the Court transmit a copy of this Memorandum Opinion and Order to all counsel of record.

/s/
Alexander Williams, Jr.
United States District Judge

7/31/2008 (8)
Civil Action No. AW-07-2960
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT

RALPH BYRD, et al., Appellants,

v.

JAMES M. HOFFMAN, et al., Appellees.

MEMORANDUM OPINION

This appeal arises from the September 27, 2007 Order of Thomas Catliota, United States Bankruptcy Court Judge for the District of Maryland (the "Bankruptcy Court"), holding in contempt and awarding sanctions against debtors Ralph T. Byrd and Beverly S. Byrd (collectively, the "Appellants"). The appeal has been fully briefed, and no hearing is deemed necessary. See Local Rule 105.6 (D. Md. 2008). For the reasons explained below, the Court AFFIRMS the Order and Rulings of the Bankruptcy Court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellants Beverly Byrd and Ralph Byrd are not unknown to this Court, having repeatedly filed appeals to the District Court and to the Fourth Circuit related to their bankruptcy matter. The following facts are those pertinent to this appeal. Appellants are debtors in a Chapter 7 bankruptcy proceeding. On April 19, 2006, the Trustee mailed a formal request to the debtors to produce documents and information

regarding their estate. After several failed attempts to obtain this information, the Trustee filed a Motion to Compel on October 24, 2006. At a hearing on the motion, Appellants stated that they had produced the information but proffered no evidence to support their claim. The Bankruptcy Court announced at the hearing that the motion would be granted. On December 8, 2006, the court issued the Production Order, giving Appellants until January 30, 2007, to comply with the Production Order.

Appellants sent a letter on January 30, 2007, stating they could not find the information because it was "misplaced during the course of moving." The Trustee subsequently filed a Contempt Motion on February 15, 2007. The court scheduled a hearing on the Contempt Motion for April 2, 2007. On the morning of the hearing, Appellants filed a response opposing the Contempt Motion and attached to the response the information requested on April 19, 2006. The court continued the hearing until April 25, 2007, to allow the Trustee time to examine the attachments. On April 25, 2007, the Trustee testified that the information was responsive to the original request but stated that Appellants offered no reason for their failure to comply with the Production Order. This hearing was continued until July 18, 2007, and the court advised Appellants to prepare an explanation for their conduct by July 18. Neither Appellant appeared at the July 18, 2007 hearing.

STANDARD OF REVIEW

This Court reviews the legal conclusions of the Bankruptcy Court de novo, but reviews its factual

determinations for clear error. Butler v. Shaw, 72 F.3d 437, 441 (4th Cir. 1996); Three Flint Hill Ltd. Pshp. v. Prudential Ins. Co. (In re Three Flint Hill Ltd. Pshp.), 213 B.R. 292, 297 (D. Md. 1997); see also Fed. R. Bankr. P. 8013. On legal issues, this Court "must make an independent determination of the applicable law." In re Jeffrey Bigelow Design Group, Inc., 127 B.R. 580, 582 (D. Md. 1991), aff'd, 956 F.2d 479 (4th Cir. 1992). Moreover, a finding of fact is clearly erroneous "only when the reviewing court is left with the definite and firm conviction that a mistake has been committed." In re Broyles, 55 F.3d 980, 983 (4th Cir. 1995) (internal quotations omitted). Finally, the Bankruptcy Court's application of law to the facts is to be reviewed for abuse of discretion. In re Robbins, 964 F.2d 342, 354 (4th Cir. 1992) (decision to lift automatic stay).

ANALYSIS

I. Sanctions for Failure to Comply with the Production Order

The Bankruptcy Code imposes specific duties on a debtor to cooperate with the trustee. Section 521(a) provides that a "debtor shall . . . (3) if a trustee is serving in the case . . ., cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title; (4) if a trustee is serving in the case . . ., surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to the property of the estate, whether or not immunity is granted under section 344 of this title. . . ." 11 U.S.C. §521(a)(3)-(4) (2006); see also In re Stinson, 269 B.R. 172, 176 (Bankr. S.D. Ohio 2001) (sanctioning a debtor

pursuant to a Local Bankruptcy Rule after debtor failed to provide property of the estate after trustee's repeated attempts to obtain compliance). These duties permit the orderly liquidation of an estate to maximize the return to creditors, and therefore, a bankruptcy court may sanction a debtor pursuant to section 105(a) of the Bankruptcy Code for failing to cooperate with the trustee if the debtor has acted in bad faith. 11 U.S.C. § 105(a); see In re Stinson, 269 B.R. at 176; see also In re Paige, 365 B.R. 632, 637-38 (Bankr. N.D. Tex 2007) (sanctioning debtor who took control of and sold off company assets without the trustee's permission).

Here, similar to the debtors in the case of In re Paige, Appellants forced the Trustee to incur additional fees which reduced the value of the estate. Had the Appellants provided the necessary information when it was first requested in April 2006 or complied with the Production Order's deadline of January 30, 2007, the Trustee would not have pursued this matter any further. Additionally, the record supports a finding of bad faith. The Bankruptcy Court noted that this proceeding was a "charade," that Appellants willfully refused to comply with the Production Order despite "the inordinate amount of time granted" to Appellants, and that Appellants failed to provide testimony or evidence for their failure to comply.

Appellants argue that sanctions are not warranted because they requested an extension of time and the Bankruptcy Court made no finding of bad faith. The request for an extension of time is immaterial because that request was denied. Appellants had sixty days to comply with this order, and the only communication Appellants provided within this time frame was a letter

stating the information was misplaced. Furthermore, this Court has previously found the type of conduct exhibited by Appellants to have "significant 'trappings' of bad faith." See Byrd v. Hoffman, No. AW-07-1730 (D. Md. Mar. 31, 2008). Appellants' bad faith conduct forced the Trustee to incur unnecessary costs seeking the requested information, preparing and prosecuting the Motion to Compel, and preparing and prosecuting the Contempt Motion. The award of these sanctions is proper under Section 105(a), and, therefore, this Court will affirm the judgment of the Bankruptcy Court.

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A Bankruptcy Court also has the power to hold a party in civil contempt and award sanctions pursuant to 11 U.S.C. § 105(a). See In re Walters, 868 F.2d 665, 669 (4th Cir. 1989). To establish contempt, the movant must show: (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's "favor;" (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive) of such violations; and (4) that the movant suffered harm as a result. JTH Tax, Inc. v. H&R Block E. Tax Servs., 359 F.3d 699, 705 (4th Cir. 2004). The purpose of a civil contempt sanction is "remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained . . ." as a result of the contemptuous conduct. Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 822 (4th Cir. 2004) (quoting Buffington v. Baltimore County, 913 F.2d 11, 133 (4th Cir. 1990)).

In this case, the Trustee has established the elements of contempt. First, Appellants were present at the hearing where the court stated it would issue the Production Order, and they even mentioned the order in their motion for reconsideration. Second, the Production Order was in favor of the Trustee, the movant. Third, Appellants had knowledge that they violated the order as signified by their request for more time on January 30, 2007. Fourth, the Trustee incurred harm through his later efforts to obtain the requested information and the preparation and prosecution of the Contempt Motion. This is the third order Appellants have violated, and the imposition of sanctions will serve the purposes of coercing Appellants into compliance with the Bankruptcy Court's orders and compensate the Trustee for losses sustained in administering the estate.

Appellants argue that allowing the attorney's fees and costs to satisfy the harm requirement would be duplicative of the requirement to show an order was violated. To support this argument, Appellants cite RI RA Holding LLC v. RI RA, No. 99-0374, 2002 WL 31163751 (M.D.N.C. Aug. 1, 2002), for the proposition that the harm element could not be satisfied through continued trademark infringement where the court order proscribed trademark infringement. Here, however, the court order was to produce the requested information. The harm sustained by the Trustee is not the continued failure to produce this information, but rather the costs and fees reasonably necessary to obtain the information. Therefore, the Bankruptcy Court's finding that Appellants harmed the Trustee is not error, and this Court will affirm the Bankruptcy Court's finding of civil contempt.

III. Impermissible Considerations

Finally, Appellants argue that the court relied upon impermissible considerations because the Bankruptcy Court referenced "the long and protracted history" of the case and findings in previous memoranda to support its decision. Appellants argue that they are simply resisting overreaching by the Trustee, and that the court sanctioned them for Rule 11 violations without the requisite procedures. However, Appellants cite no authority which suggests that the court relied on impermissible considerations.[1]

Appellants also incorrectly state the sanctions were based on Rule 11, when in fact they were based upon provisions with in the Bankruptcy Code. See 11 U.S.C. §§105(a), 521(a). Furthermore, the "long and protracted history of this case" is a permissible consideration given the number of frivolous and dilatory motions and appeals Appellants have filed. Thus, the Court finds that the Bankruptcy Court did not rely upon any impermissible considerations.

CONCLUSION

Given Appellants' failure to succeed on any points they raise in this appeal, this Court AFFIRMS in full the decision of the Bankruptcy Court. An Order consistent with this Memorandum Opinion will follow.

July 31, 2008
/s/
Date Alexander Williams, Jr.
United States District Court Judge

9/27/2007 (676)
Chapter 7 (Substantively consolidated with No. 01-25006)
Case No. 04-35620-TJC
Docket Nos. 433 and 520

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors

ORDER AWARDING SANCTIONS FOR THE DEBTORS' FAILURE TO PRODUCE DOCUMENTS AND FINDING THE DEBTORS IN CONTEMPT FOR VIOLATING THE PRODUCTION ORDER

Before the Court is the Motion to Hold Debtors in Contempt and For Award of Monetary Sanctions (Docket No. 520) and the sanctions request in the Motion to Compel Production of Documentation and Information by the Debtors (Docket No. 433) filed by Gregory P. Johnson, the Chapter 7 Trustee (the "Trustee"). Ralph T. Byrd and Beverly S. Byrd (the "Debtors") filed various responses to the motions and the Court held hearings on the motions, as explained more fully in the Memorandum Opinion Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order, filed contemporaneously herewith. For the reasons set forth in the Memorandum Opinion, it is, by the United States Bankruptcy Court for the District of Maryland;

ORDERED, that the Debtors are in contempt of Court; and it is further,

ORDERED that the Trustee is awarded sanctions against the Debtors in the amount of $17,293 to compensate the Trustee for his efforts to obtain documents and information and for the Debtors' violations of 11 U.S.C. § 521 and the Production Order.

9/27/2007 (675)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

Case No. 04-35620-TJC
(Substantively consolidated with 01-25006-TJC)
Chapter 7
Docket Nos. 433 and 520

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors.

MEMORANDUM OPINION AWARDING SANCTIONS FOR THE DEBTORS' FAILURE TO PRODUCE DOCUMENTS AND FINDING THE DEBTORS IN CONTEMPT FOR VIOLATING THE PRODUCTION ORDER

Before the Court is the Motion to Hold Debtors in Contempt and For Award of Monetary Sanctions (the "Contempt Motion") (Docket No. 520), filed by Gregory P. Johnson, the Chapter 7 Trustee (the "Trustee"). In the Contempt Motion, the Trustee seeks to hold Ralph T. Byrd and Beverly S. Byrd (the "Debtors") in contempt for failure to comply with an order of this Court requiring the Debtors to produce documents and information by January 30, 2007. The Trustee also seeks sanctions to compensate the Trustee for his efforts to obtain the requested information from the Debtors over the past year, which culminated in the Trustee filing the Motion to Compel Production of Documentation and Information by the Debtors, Docket No. 433 ("Motion to Compel") and then the Contempt Motion. For the reasons stated herein, the Court will award sanctions against the Debtors in favor

of the Trustee on behalf of the estate in the amount of $17,293. The Court also finds the Debtors to be in contempt.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157(a), and Local Rule 402 of the United States District Court for the District of Maryland. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following constitutes the Court's findings of fact and conclusions of law.

I. FINDINGS OF FACT

This bankruptcy case, and the predecessor bankruptcy case of Ralph Byrd, Case No. 01-25006, has a long and protracted history. That history has been summarized in a number of recent opinions by this Court. See, e.g., Memorandum of Decision Granting the Motion of the Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD, at pages 2-7 (Docket No. 480). Contemporaneously herewith, the Court is issuing a Memorandum Opinion Finding the Respondents in Contempt and Awarding Sanctions for Violations of the Automatic Stay, the Barton Doctrine and the Injunction Order. That Memorandum Opinion provides a summary of this case at pages 4-6 and will not be repeated here.

On April 19, 2006, soon after the case was converted to Chapter 7, the Trustee, through counsel, sent a letter to the Debtors requesting that the Debtors produce various documents and information. The Trustee had unsuccessfully sought to obtain these documents prior to the conversion to Chapter 7. The Debtors did not comply previously or in response to the April 19 letter.

The Trustee sent the Debtors follow-up letters requesting documents dated May 8, 2006, June 9, 2006, and June 16, 2006, to no avail. The Trustee made another request for documents at the meeting of creditors held on July 21, 2006, and sent yet another follow-up letter dated September 18, 2006, again to no avail. See Trustee Exhibits 3, 4, 5, 6 and 7.

On October 24, 2006, the Trustee filed the Motion to Compel, Docket No. 433. The Trustee sought an order requiring the Debtors to produce documents and certain information and imposing sanctions for the Debtors' refusal to do so.

The Court held a hearing on the Motion to Compel on December 1, 2006. The Trustee testified that the Debtors had refused to produce the requested documents and repeatedly ignored his requests. He testified about his frustration in dealing with the Debtors and the additional and unnecessary costs the estate was incurring as a result of the Debtors' dilatory and uncooperative tactics.

The Debtors argued that they previously produced for inspection the originals of all of the documents that the Trustee requested. The Debtors admitted that, of whatever originals they had previously produced, they did not allow the Trustee to either keep the originals or make copies. The Debtors had no copies, letters, or evidence of any sort to support their contention that they had previously produced originals for inspection. The Debtors did not introduce any evidence whatsoever in connection with the Motion to Compel; neither Debtor testified. Ralph Byrd, a Maryland attorney, simply argued from the podium. Other than

their contention that they previously produced some or all of the requested information, the Debtors offered no other reason for not producing the documents.

At the hearing, the Court announced it would grant the Motion to Compel and give the Debtors until January 30, 2007, to produce the requested information. On December 8, 2006, the Court entered the Order Granting Trustee's Motion to Compel Production of Documentation and Information (the "Production Order"). Docket No. 477. The Court deferred ruling on the Trustee's request for sanctions until after the January 30, 2007, production deadline in the order. Production Order at p. 6. The Debtors filed a motion to reconsider the Production Order, which the Court denied, but they did not appeal the Production Order. See Docket Nos. 489 and 493.

On January 30, 2007, the Debtors sent the Trustee a letter stating that they could not make many of the documents available for production because they were "misplaced during the course of moving." The Debtors did not submit any documents with the January 30 letter.

The Trustee filed the Contempt Motion on February 15, 2007. In it, the Trustee contends that the Debtors failed to comply with the Production Order and should be held in contempt, and the Court should impose sanctions against the Debtors. The Court set a hearing on the Contempt Motion and the sanction request in the Motion to Compel for April 2, 2007.

On the morning of April 2, 2007, the Debtors filed their long-overdue response to the Contempt Motion.

Docket No. 533. Along with their response, the Debtors served and filed a fairly extensive amount of documents that purport to be responsive to the Trustee's document request. In their response, the Debtors contested a number of points raised by the Trustee about the Debtors' conduct throughout this case, but offered no explanation for the delay in producing the required documents until that morning.

The Court sua sponte continued the scheduled hearing to allow the Trustee an opportunity to review the Debtors' document production of April 2nd. See Order Continuing Hearing on Trustee's Motion for Contempt. Docket No. 534. The hearing on the Contempt Motion and the sanction request in the Motion to Compel was rescheduled for April 25, 2007 for 2:00 p.m.

The Trustee's presentation in support of the Contempt Motion and the sanction request took up the afternoon of the April 25 hearing. The Trustee plainly established that many of the documents produced by the Debtors on April 2 were responsive to the Trustee's earlier letters and the Production Order, and that he was provided no explanation for the Debtor's failure to produce the documents timely. The Court continued the hearing and advised the Debtor that, at the continued hearing, it expected to hear the Debtors' explanation for their failure to comply timely with the Production Order. The hearing was continued to July 18, 2007, at which neither Debtor appeared.

The Trustee seeks sanctions for reimbursement of costs and fees in connection with his efforts to obtain the documents and information from the Debtors. Those efforts include:

- draft and send the letters dated May 6, 2006; June 9, 2006; June 16, 2006; and September 18, 2006.

- prepare the Motion to Compel, Docket No. 433;

- review and consider the Debtors' motion to strike the Motion to Compel (Docket No. 455);

- review and respond to the Debtors' opposition to the Motion to Compel (Docket No. 456);

- review and consider the Debtors' motion to reconsider the Production Order (Docket No. 489);

- prepare and file the Contempt Motion (Docket No. 520) and request for expedited hearing thereon (Docket No. 521);

- review and respond to the Debtors' emergency motion to strike the Motion to Compel (Docket No. 533);

- review the documents produced belatedly on April 2, 2007;

- prepare for and attend the hearings scheduled for December 1, 2006, April 2, April 25 and July 18, 2007.

The support for the fees and costs incurred by the trustee was contained in several exhibits. After the conclusion of the hearing, and while the matter was under advisement, counsel for the Trustee filed a fee

application. Docket No. 660. As is customary, counsel submitted with the fee application billing records in support of the fees. The application contains the complete billing records of the amount of fees incurred in connection with the Trustee's efforts to obtain the documents, file the Motion to Compel and the Contempt Motion. See Docket No. 660, Exhibit 3 page 1 and 2 of 21; and pages 8 -10 of 21. These amounts are $2,957.00 in connection with the Trustee's efforts to obtain documents (Docket No. 660, Exhibit 3 page 1 and 2 of 21) and $14,336.00 in connection with the Motion to Compel and the Contempt Motion (Docket No. 660, Exhibit 3 pages 8 - 10 of 21). The Court will consider the record of the hearing to be reopened to accept this supplemental information. The Court has reviewed the fees and finds and concludes that the fees incurred are reasonable compensation for actual, necessary services rendered to the Trustee.

The Court further finds that, having reviewed the Debtors' filings set forth above in opposition to the Trustee's efforts to obtain the documentation and information, the Debtors' objections were without merit and filed for the purpose of delay. The Court further finds and concludes that the Debtors had no just cause for their refusal to provide

the documents and information to the Trustee in response to his letters, or for their failure to comply with the Production Order.

II. CONCLUSIONS OF LAW

The Bankruptcy Code imposes specific duties on a debtor to cooperate with the trustee and to deliver to

the trustee property of the estate and the estate's books and records. Specifically, Section 521(a) provides that a debtor shall:

> (3) If a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title
> (4) if a trustee is serving in a case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;...

11 U.S.C. §§ 521(a)(3);(4) (2004).[1] The duties imposed on debtors in Section 521 are essential to the effective and efficient administration of the estate.

A debtor may be sanctioned for failing to cooperate with the trustee. In re Paige, 365 B.R. 632, 638 (Bankr. N.D. Tex. 2007) (citing In re Cochener, 360 B.R. 542 (Bankr. S.D. 2007). For example, in In re Stinson, 269 B.R. 172 (Bankr. D. Ohio 2001) the trustee, at the meeting of creditors, informed the debtor that she would be receiving a tax refund which was property of the estate and requested that the debtor provide copies of the income tax returns and turnover the tax refund when she received it. Id. at 173.

When the debtor did not comply, the trustee sent a letter to the debtor requesting that she provide a copy of her tax return and turnover any refund that she had received. Id. In response, the debtor provided copies of her tax returns but did not turnover her tax refund

which the debtor had received. Id. Subsequently, the trustee sent another letter requesting the debtor turnover her tax refund and warning the debtor that a motion for turnover would follow if the debtor did not comply. Id. at 174. When the debtor did not comply, the Trustee filed a motion for turnover that was granted. Id. Again, the debtor failed to turnover the tax refund and the trustee sent another letter warning the debtor that if she didn't comply with the turnover order sanctions would be sought. Id. The debtor did not comply and the trustee filed a motion for sanctions. In that motion, the trustee requested turnover of the tax refund as well as sanctions for the costs and attorneys fees incurred for sending the multiple letters and filing the turnover motion and the sanctions motion. Id. at 173. The bankruptcy court granted the trustee's motion for sanctions and stated:

> a chapter 7 debtor has an affirmative duty to cooperate with the case trustee in the administration of the bankruptcy estate...This includes a duty to surrender to the trustee all property of the estate...This duty to cooperate is based upon one of the very simple goals of any chapter 7 case—to maximize the return to creditors through the orderly liquidation of the assets. Where a debtor fails to cooperate with the case trustee, the trustee is then forced to expend estate resources in pursuing the debtor's cooperation, which results in the reduction of the distribution to creditors.

Id. at 176.

The Court concludes that sanctions against the Debtors

are in order. This case typifies the situation contemplated in Stinson, where the conduct of a recalcitrant debtor required the trustee to expend an inordinate amount of estate resources in a wasteful effort to fulfill his duties. The record here establishes a continuous, ongoing effort by the Debtors to frustrate the Trustee's administration of the estate. The Debtors have turned a request for documents by the Trustee into a costly, year-long charade. The Trustee made numerous attempts to obtain the information without Court intervention, but the Debtors ignored all five letters from the Trustee requesting documents, not to mention the substantial efforts by the Trustee before the case was converted to Chapter 7.

The Debtors offered no plausible explanation for their failure to produce the information. Their claim that they previously made the originals available was contested by the Trustee under oath, while the Debtors themselves refused even to take the stand in support of their position. They offered no evidence whatsoever in support of their claim, and admitted they did not allow the Trustee to make copies of the original documents they purportedly previously produced.

Further, the Court finds and concludes that the Debtors willfully refused to comply with the Production Order. The Court gave the Debtors sixty days to produce documents that had been requested by the Trustee eight months earlier. Notwithstanding the inordinate amount of time granted to the Debtors, they did not comply with the Production Order. Moreover, they did not comply until the morning of the hearing scheduled for April 2, 2007, at which hearing the Trustee was seeking the imposition of sanctions and an

order of contempt. The Debtors offered no explanation for their failure to produce the documents on January 30, 2007, or for their delay in producing the documents until April 2, 2007. The Court has given the Debtors ample opportunity to explain the delay in producing the information; yet the Debtors have failed to do so.

The Court will award sanctions against the Debtors in the amount of $17,293 which represents the Trustee's reasonable and necessary fees and costs of pursuing the document requests and information, preparing and prosecuting the Motion to Compel, and preparing and prosecuting the Contempt Motion.

The Court also finds the Debtors to be in contempt for their willful violation of the Production Order. A Bankruptcy Court has the power, pursuant to 11 U.S.C. § 105(a) to hold a party in civil contempt and award sanctions. See In re Walters, 868 F.2d 665 (4th Cir. 1989).

> To establish civil contempt, a movant must show each of
> the following elements by clear and convincing evidence:
> (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
> (2) ...that the decree was in the movant's "favor";
> (3)...that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive) of such violations; and
> (4)...that [the] movant suffered harm as a result.

JTH Tax, Inc. v. H&R Block E. Tax Servs., 359 F.3d 699, 705 (4th Cir. 2004) (quoting Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000)). The purpose of a contempt sanction is "...remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained..." as a result of the contemptuous conduct. Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 822 (4th Cir. 2004) (quoting Buffington v. Baltimore County, 913 F.2d 113, 133 (4th Cir. 1990)). To that end, "...a district court has broad discretion to fashion an appropriate coercive remedy in a case of civil contempt, based on the nature of the harm and the probable effect of alternative sanctions." United States v. Darwin Constr. Co., 873 F.2d 750, 756 (4th Cir. 1989).

In this case, Ralph Byrd was in court at the hearing on December 1, 2006, at which the Court announced from the bench that it was going to enter an order granting the Motion to Compel and require the Debtors to produce the documents and information by January 30, 2007. The Court issued the Production Order on December 8, 2006, requiring the Debtors to produce the documents and information by January 30, 2007. The Debtors had actual knowledge of the Production Order, including the January 30, 2007 deadline imposed therein, as established by their Motion to Reconsider Order Granting Trustee's Motion to Compel Production of Documents and Information, filed by the Debtors on December 18, 2006. Docket No. 489. There, they specifically refer to the Production Order and the January 30 deadline. Id. at ¶ 2. The Debtors failed to comply with the Production Order, and were given ample notice and opportunity of the claim of sanctions and contempt against them. Accordingly, the Trustee

has established the elements of contempt. However, while the Court will enter an order holding the Debtors in contempt, it will not grant sanctions in addition to those granted above for their failure to produce documents and information, because those sanctions include the fees incurred by the Trustee in pursuing the documents and Contempt Motion after the Debtors violated the Production Order.

Finally, as the Production Order is the third order that the Debtors have willfully violated within the past eight months of this case, the Court is denying the Debtors their discharge for the reasons stated in Section II.D. of the Memorandum Opinion Finding the Respondents in Contempt and Awarding Sanctions for Violations of the Automatic Stay, the Barton Doctrine and the Injunction Order, issued contemporaneously herewith. The basis for the denial of the Debtors' discharge is set forth in detail there.

III. CONCLUSION

For the foregoing reasons the Court will enter an order awarding sanctions against the Debtors in the amount of $17,293 to compensate the Trustee for his costs in pursuing the documents and information, and finding the Debtors to be in contempt.

Footnote

1 The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), P.L. 109-8, 119 Stat. 23, reordered this provision. Because the Debtors' case was filed prior to the effective date of BAPCPA, the Court will cite to the provision as it stood prior to the

effective date of BAPCPA. See P.L. 109-8 § 1501.

9/27/2007(678)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

Case No. 04-35620-TJC
Chapter 7 Consolidated with No. 01-25006)

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors.

Docket Nos. 549 and 595

Gregory P. Johnson, Trustee, Movant,

v.

Ralph T. Byrd, Beverly S. Byrd, Stanton P. Byrd,
Ralph Trevor Byrd, Mark S. Byrd, Respondents.

ORDER FINDING THE RESPONDENTS IN CONTEMPT AND AWARDING SANCTIONS FOR VIOLATIONS OF THE AUTOMATIC STAY, THE BARTON DOCTRINE AND THE INJUNCTION ORDER

Upon consideration of the Motion for Relief Due to Violations of the Automatic Stay, Docket No. 549, and the Emergency Motion for Relief Due to Flagrant Violations of this Court's Order of May 18, 1007, Docket No. 595, both filed by the Chapter 7 Trustee, Gregory Johnson (the "Trustee"), in which the Trustee seeks a finding of contempt and sanctions against debtors Ralph T. Byrd and Beverly S. Byrd and their three sons, Stanton P. Byrd, Ralph Trevor Byrd, and Mark S. Byrd, and the Court having reviewed the responses and

objections and having held a hearing on July 18, 2007, for the reasons set forth in the Memorandum Opinion Finding the Respondents in Contempt and Awarding Sanctions for Violations of the Automatic Stay, the Barton Doctrine and the Injunction Order, entered contemporaneously herewith, it by the United States Bankruptcy Court for the District of Maryland;

ORDERED, that debtors Ralph T. Byrd and Beverly S. Byrd and their three sons, Stanton P. Byrd, Ralph Trevor Byrd, and Mark S. Byrd, are in contempt of Court; and it is further

ORDERED, that the Trustee is awarded monetary sanctions as follows;

(1) $14,281.45 against debtors Ralph T. Byrd and Beverly S. Byrd and their three sons, Stanton P. Byrd, Ralph Trevor Byrd, and Mark S. Byrd, jointly and severally as actual damages for filing the Complaint for Abuse of Process, Civil Conspiracy and Constructive Trust for 4901 Sundown Road, Laytonsville, MD and Demand for Jury Trial in the Circuit Court for Montgomery County, Case No. 281858-V in violation of the automatic stay of 11 U.S.C. § 362(a)(3) and the Barton Doctrine;

(2) $7,895.50 against debtors Ralph T. Byrd and Beverly S. Byrd and their three sons, Stanton P. Byrd, Ralph Trevor Byrd, and Mark S. Byrd, jointly and severally as a compensatory civil contempt sanction for violating the Amended Order Granting in Part Trustee's Emergency Motion for Relief From the Automatic Stay, Enjoining Respondents and Declaring Complaint Void in Part, Docket No. 583, and as actual

damages awarded for the second violation of the automatic stay and the Barton Doctrine, for filing and serving the Second Amended Complaint for Abuse of Process, Civil Conspiracy, Aiding and Abetting and Constructive Trust for 4901 Sundown Road Laytonsville MD and Demand for Jury Trial in the Circuit Court for Montgomery County in Case No. 281858-V;

(3) $23,686.50 against debtors Ralph T. Byrd and Beverly S. Byrd jointly and severally as a punitive damage for willfully and maliciously violating the automatic stay by filing and serving the Second Amended Complaint; and it is further,

ORDERED, that the debtor Ralph T. Byrd's and Beverly S. Byrd's discharge is DENIED.

9/27/2007 (677)
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

Case No. 04-35620-TJC
Chapter 7 Consolidated with No. 01-25006)

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors.

Docket Nos. 549 and 595

Gregory P. Johnson, Trustee, Movant,

v.

Ralph T. Byrd, Beverly S. Byrd, Stanton P. Byrd,
Ralph Trevor Byrd, Mark S. Byrd, Respondents.

MEMORANDUM OPINION FINDING THE RESPONDENTS IN CONTEMPT AND AWARDING SANCTIONS FOR VIOLATIONS OF THE AUTOMATIC STAY, THE BARTON DOCTRINE AND THE INJUNCTION ORDER

The Chapter 7 Trustee, Gregory P. Johnson (the "Trustee"), seeks an order holding in contempt and awarding sanctions against debtors Ralph T. Byrd and Beverly S. Byrd (collectively, the "Debtors"), and their three sons, Stanton P. Byrd, Ralph Trevor Byrd, and Mark S. Byrd (collectively, the "Byrds' Sons") (the Debtors and the Byrds' Sons are collectively referred to as the "Respondents"). The Trustee seeks this relief for two reasons:

First, the Trustee seeks relief as a continuation of the Motion for Relief Due to Violations of the Automatic Stay, Docket No. 549 (the "Initial Motion"), filed by the Trustee on May 7, 2007. There, the Trustee sought, among other things, an injunction against the Respondents and sanctions for civil contempt. The Trustee contended that the Respondents violated the automatic stay by filing a complaint in state court seeking, inter alia, to impose a constructive trust on property of the estate known as 4901 Sundown Rd, Laytonsville, MD 20882 (the "Property"). The Trustee also contended that the Respondents violated the Barton Doctrine[1] by asserting claims in the complaint for damages against the Trustee, a former trustee in the bankruptcy case of Ralph Byrd, and their counsel. On May 18, 2007, the Court issued a Memorandum Decision (Docket No. 573) (the "Memorandum Decision") finding, among other things, that (1) the Respondents' efforts to obtain a constructive trust over the Property and to require the Trustee to transfer his interest in the Property to the Respondents violated the automatic stay of 11 U.S.C. § 362(a)(3); and (2) the Respondents' lawsuit against the Trustee, the prior trustee, and their counsel in state court for damages based on their actions in the performance of their duties was a violation of the Barton Doctrine. The Court enjoined the Respondents from, among other things, filing, maintaining or pursuing the state court action against the Trustee, the prior trustee and their counsel, and deferred ruling on the Trustee's request for contempt and sanctions pending a further hearing.

Second, the Trustee seeks relief based on the allegations set forth in the Emergency Motion for Relief Due to Flagrant Violations of this Court's Order

of May 18, 2007, Docket No. 595 (the "Supplemental Motion"), filed by the Trustee on June 1, 2007. In it, the Trustee contends that after the Court issued the Memorandum Decision and the injunction order, the Respondents nevertheless filed an amended complaint and served the amended complaint on the Trustee, the prior trustee and their counsel. The Trustee contends that these actions constituted a willful and flagrant violation of the Court's injunction order, as well as an additional willful and flagrant violation of the automatic stay and the Barton Doctrine.

The Court provided ample opportunity for the Respondents to respond or object to the contempt and sanction requests and held a hearing on July 18, 2007. None of the Respondents appeared.

For the reasons set forth herein, the Court finds and concludes that (1) the Respondents willfully violated the automatic stay and the Barton Doctrine by filing the original state court complaint; (2) the Respondents willfully violated an express order of this Court by filing and serving the amended state court complaint in direct contravention of the order; and (3) the Respondents willfully and maliciously violated the automatic stay and the Barton Doctrine by filing and serving the amended state court complaint after the Court expressly ruled in the Memorandum Decision that the claims in the original complaint violated the automatic stay and the Barton Doctrine. The Court will enter an order holding the Respondents in contempt of Court, and imposing sanctions as specified herein.

The Court has jurisdiction over this matter pursuant

to 28 U.S.C. §§ 1334, 157(a), and Local Rule 402 of the United States District Court for the District of Maryland. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A),(G) and (J). The following constitutes the Court's findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. PROCEDURAL BACKGROUND

This case, and its predecessor bankruptcy case of Ralph Byrd, Case No. 01-25006, has a long and protracted history that spans almost six years. The Court has entered numerous decisions and opinions that have recounted much of the entire history of this case. See, e.g., Memorandum of Decision Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD, Docket No. 480, at pp. 2-7. Recently, the Court entered the Memorandum Decision, Docket No. 573, on the Initial Motion. The following summary is taken from the Memorandum Decision.

On December 14, 2001, Platinum Financial Services Corp. filed an involuntary petition against Ralph Byrd under Chapter 7 of the Bankruptcy Code, initiating Case No. 01-25006. On July 17, 2002, this Court entered an order for relief under Chapter 7 and Mr. Roger Schlossberg was appointed the Chapter 7 Trustee the next day. On January 24, 2003, the District Court reversed the entry of the order for relief. Thereafter, this Court entered an order staying all matters on April 15, 2003. On February 11, 2004, the United States Court of Appeals for the Fourth Circuit reversed and

remanded the District Court's decision reversing the entry of the order for relief.

On June 25, 2004, this Court entered an order converting Ralph Byrd's Case No. 01-25006 from Chapter 7 to Chapter 11 at Mr. Byrd's request. Docket No. 183 in Case No. 01-25006. On July 23, 2004, the Trustee was appointed the Chapter 11 trustee.

Beverly Byrd, Ralph Byrd's wife, then filed her petition under Chapter 13 on November 11, 2004, thus initiating Case No. 04-35620. The Trustee, then serving as the Chapter 11 trustee in Mr. Byrd's case, filed a motion to substantively consolidate Ralph Byrd's Case No. 01-25006 into Beverly Byrds's Case No. 04-35620. That motion was granted with the consent of the Debtors on January 12, 2005, by the entry of the Consent Order, Docket No. 49 in Case No. 04-35620, the result of which was that the cases were substantively consolidated into the Chapter 13 Case No. 04-35620. The Debtors' consolidated bankruptcy case was converted from Chapter 13 to Chapter 7 on March 20, 2006. Docket No. 249. The Trustee was subsequently appointed the Chapter 7 trustee and continues to serve in that position.

On September 18, 2006, the Trustee filed the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD. Docket No. 402. The Trustee sought a court order requiring the Debtors to vacate the Property, which was then the Debtors' residence, by a date certain, and a writ of assistance to the United States Marshall in the event the Debtors did not do so. The Debtors opposed the removal motion, Docket No. 418, and the Court held

a hearing on the removal motion on December 1, 2006.

On December 11, 2006, the Court issued the Memorandum of Decision Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD, Docket No. 480, granting the removal motion and entered an order of removal. The Court ordered the Debtors to vacate the Property by January 31, 2007.[2]

On March 23, 2007 the Trustee filed the Motion for Order Authorizing Trustee to Enter into Sales Agreement and Approving Sale of Certain Real Property Free and Clear of All Liens, Claims, Interests and Encumbrances (the "Sale Motion"). Docket No. 527.

In the Sale Motion, the Trustee sought approval of a contract to sell the Property to Richard and Jenine Clonch (the "Clonchs") for $735,000. After the Debtors filed an opposition to the Sale Motion, Docket No. 537, the Court held a hearing on April 23, 2007.

Upon completion of the hearing, and after an auction sale of the Property conducted by the Trustee, the Court approved the sale of the Property to the Clonchs, who made the winning bid at the auction in the amount of $805,000. The Court entered the order approving the sale on April 25, 2007. The Trustee subsequently sold the Property to the Clonchs pursuant to the Court's order.

B.FINDINGS OF FACT RELATED TO THE SANCTIONS AND CONTEMPT REQUESTS

1. The Initial Motion.

On April 23, 2007, the same day as the hearing on the Sale Motion but without disclosing it to the Court or the Trustee, the Respondents filed a Complaint for Abuse of Process and Civil Conspiracy and Constructive Trust for 4901 Sundown Road, Laytonsville, MD and Demand for Jury Trial (the "Complaint") in the Circuit Court for Montgomery County, Case No. 281858-V. In the Complaint, the Respondents named, among other defendants (1) the Trustee; (2) Roger Schlossberg, who served as the original Chapter 7 trustee; and (3) Shulman, Rogers, Gandal, Pordy & Ecker, P.A. ("Shulman Rogers"), which serves as counsel to the Trustee and served as counsel to Mr. Schlossberg (the Trustee, Mr. Schlossberg and Shulman Rogers are collectively referred to herein as the "Bankruptcy Defendants").

The Complaint asserted three counts for relief.[3] As pertinent here, the allegations of the Complaint described numerous actions taken by the Bankruptcy Defendants in the administration of the estate and sought damages against them for abuse of process and civil conspiracy. The Respondents also sought to impose a constructive trust against the Property as an equitable remedy, and requested the state court to order the Trustee to convey all of his right, title and interest in the Property to the Debtors.

On May 7, 2007, the Trustee filed the Initial Motion. The Trustee sought a declaration that the Respondents violated the automatic stay by seeking in the Complaint to impose a constructive trust on the Property. In addition, the Trustee contended that the Respondents

violated the Barton Doctrine, and sought to enjoin the Respondents from filing and/or maintaining lawsuits in state and federal courts regarding the liquidation or administration of the bankruptcy estate without leave of the Court.

After the Debtors filed an opposition to the Initial Motion, the Court issued the Memorandum Decision on May 18, 2007.[4]

The Court determined that (1) the Respondents' effort to obtain a constructive trust over the Property violated the automatic stay of 11 U.S.C. § 362(a)(3); and (2) the Respondents' lawsuit against the Bankruptcy Defendants seeking damages for actions they took in the administration of the estate violated the Barton Doctrine. The Court entered an order which, among other things, enjoined the Respondents from:

filing, pursuing or maintaining any action in state or federal court seeking to obtain possession, custody, control of or any interest in the Property;

- taking any other action seeking directly or indirectly to obtain possession, custody, control of or any interest in the Property or otherwise taking any action that will encumber the Property;

- filing, pursuing or maintaining any action in state or other federal court seeking any remedy against the Bankruptcy Defendants for actions they took in the performance of their duties in this bankruptcy proceeding, or in the predecessor bankruptcy case of Ralph T. Byrd,

Case No. 01-25006, without first seeking and obtaining leave of this Court;

- taking any other action that has the intent or effect of hindering, delaying or preventing the sale of the Property by the Trustee pursuant to the order of this Court.

Amended Order Granting in Part Trustee's Emergency Motion for Relief From the Automatic Stay, Enjoining Respondents and Declaring Complaint Void in Part, Docket No. 583 (the "Injunction Order") at pp. 2-3.

2. The Supplemental Motion.

The Trustee filed the Supplemental Motion on June 1, 2007. In it, the Trustee alleged that, on or about May 29, 2007, eleven days after the Court issued the Injunction Order, the Respondents filed the Second Amended Complaint for Abuse of Process, Civil Conspiracy, Aiding and Abetting and Constructive Trust for 4901 Sundown Road Laytonsville MD and Demand for Jury Trial (the "Second Amended Complaint") in Case No. 281858 V. The Trustee contends that the Respondents violated the Injunction Order both by filing the Second Amended Complaint and by serving it on the Bankruptcy Defendants. The Trustee further contends that the Respondents again violated the automatic stay and the Barton Doctrine by filing and serving the Second Amended Complaint.

The Second Amended Complaint was signed by Ralph Byrd as counsel for all the Respondents. The Second Amended Complaint continues to seek a constructive trust over the Property, and continues to seek damages

against the Bankruptcy Defendants for actions they took in the administration of the estate. In comparison to the Complaint, nothing of substance was removed from the Second Amended Complaint, although some allegations were added. The Second Amended Complaint adds the Clonchs as defendants simply because they purchased the Property pursuant to the Court's sale order, and seeks $5 million in compensatory damages and $50 million in punitive damages.

3. The July 18th Hearing.

Both the Trustee and Mr. Schlossberg testified at the July 18, 2007 hearing. Their testimony and other evidence at the hearing established that on or about May 29, 2007, certainly well after the Injunction Order was issued on May 18, 2007, the Respondents filed the Second Amended Complaint.

On July 9 or July 10, 2007, the Respondents served Mr. Schlossberg by hand with a writ of summons issued by the Circuit Court for Montgomery County Maryland issued on July 2, 2007, along with a copy of the Second Amended Complaint. Schlossberg Exhibit 1. The Second Amended Complaint is not dated; however, it refers to actions that occurred on May 25, 2007. Second Amended Complaint at ¶ 73; Schlossberg Exhibit 1 at ¶ 73.

On July 5, 2007, the Respondents served by hand on Shulman Rogers a writ of summons issued by the Circuit Court for Montgomery County Maryland issued on July 2, 2007, along with a copy of the Second Amended Complaint. Exhibit G.

On or around that date, the Respondents mailed a copy of the Second Amended
Complaint to the Trustee.

The Trustee testified that the estate incurred legal fees and costs in the amount of $14,281.45 in obtaining, reviewing and responding to the Complaint, filing the Initial Motion and matters related to the Initial Motion. The Trustee introduced into evidence the billing records of counsel for the Trustee to establish these amounts. The Court has reviewed the fees and finds and concludes that the fees incurred are reasonable compensation for actual, necessary services rendered to the Trustee.

The Trustee testified that, through June 12, 2007, the estate incurred legal fees and costs in the amount of $2,680.50 in obtaining, reviewing and responding to the Second Amended Complaint, filing the Supplemental Motion and matters related to the Supplemental Motion. The Trustee introduced into evidence the billing records of counsel for the Trustee to establish these amounts. After June 12, 2007, the Trustee incurred an additional $5,215.00 in fees in connection with matters related to the Supplemental Motion.[6] The Court has reviewed the fees and finds and concludes that the fees incurred are reasonable compensation for actual, necessary services rendered to the Trustee.

4. The Debtors' Conduct in this Case.

In his request for relief, the Trustee points to numerous examples where the Debtors have failed to cooperate with the Trustee or disregarded a Court order in this bankruptcy case, and requested that the

Court impose severe sanctions against the Debtors. The Trustee contends that the Debtors' conduct establishes their disdain for and abuse of the bankruptcy process.

The Trustee testified about the Debtors' continuous and ongoing efforts to frustrate his administration of the case. These efforts have taken several forms. First, the Debtors have failed to comply with several recent orders of this Court, such as the Injunction Order. See also discussion at Section II.D. Second, the Debtors repeatedly and continually file motions for reconsideration, motions to stay pending appeals and appeals of bankruptcy rulings. These actions have seldom been successful, and serve little purpose other than to delay the administration of the estate and generate administrative claims to the detriment of creditors. Third, the Debtors have refused to cooperate with the Trustee on virtually all administrative matters, such as turnover of the Property and documents and allowing inspections of the Property. The Initial Motion sets forth examples of instances where the Trustee required Court assistance to perform fundamental trustee duties. The list there is by no means complete. Fourth, the Debtors allowed the Property to deteriorate in value and kept it in deplorable condition, as found by two different bankruptcy judges on separate occasions.[7]

Several recent examples suffice. Despite the clear obligations in Section 521(a)(3) and (4) for the Debtors to cooperate with the Trustee and surrender all property of the estate and any recorded information, including books, documents and records, the Trustee had to undertake a year long effort of letter-writing,

motions, hearings and orders to obtain possession of the Property and documentation and information. With respect to turnover of the Property, those efforts culminated with the Court's Memorandum of Decision Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD, Docket No. 480, ordering the Debtors to vacate the Property by a date certain. With respect to documents and information, the Court is entering contemporaneously herewith the Memorandum Opinion Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order, finding the Debtors in contempt and awarding sanctions for their failure to cooperate with the Trustee and produce documentation.

Further, on numerous occasions, the Trustee has been required to obtain court orders, including writs of assistance to the United States Marshall, in order to administer the estate against the Debtors' opposition. Examples include:

- order directing the debtor to provide the trustee access to the Property, Docket No. 106 in Case No. 01-25006;

- order requiring the Debtor to file schedules and attend the Section 341 meeting of creditors, Docket No. 176 in Case No. 01-25006;

- order directing appointment of the Chapter 11 trustee; Docket No. 212 in Case No. 01-25006;

- order requiring the Debtor to provide the Trustee access to the Property and to show it to prospective purchasers, Docket No. 272 in Case No. 01-25006;

- order enforcing the Court's prior orders compelling certain actions and cooperation by the Debtor and issuing a writ of assistance to the United States Marshall to assist the Trustee; Docket No. 299 in Case No. 01-25006;

- order requiring the Debtors to vacate the Property and issuing a writ of assistance to the United States Marshall; Docket No. 482 in Case No. 04-35620.

The Trustee testified that the total administration claims in the case now approach $300,000, which the Trustee testified is extraordinarily high for what should have been a straightforward bankruptcy case with a relatively small number of assets and claims against the estate.[8] The Trustee testified that this amount is directly attributable to the Debtors' conduct in this case.

The Trustee's testimony was uncontroverted and collaborated by the record in this case. The Court has witnessed the Debtors' conduct during the past eighteen months and has reviewed the docket for the period prior to that time. The Court accepts the Trustee's testimony in its findings and conclusions and finds that the Debtors have abused the bankruptcy process and are acting in bad faith.

5. Notice to Respondents and Opportunity to Object

and Appear.

In their response to the Initial Motion, the Debtors did not dispute that they filed the Complaint and the only issue was the legal consequence of the filing.[9] Further, the sale of the Property was scheduled for May 18, 2007. The Debtors' filing of the Complaint had the effect of disrupting the sale, and there was a need to consummate the sale in light of the Property's deteriorating condition. Accordingly, the Court ruled on the merits of the Initial Motion in the Memorandum Decision without a hearing. The Court, however, deferred ruling on the Trustee's contempt and sanction request pending a hearing, so that the Respondents would have a full opportunity to address the contempt and sanctions request.

Along with the Supplemental Motion, the Trustee filed an emergency motion, Docket No. 596, to shorten the time for the Respondents to respond to the Supplemental Motion and to set an expedited hearing on the Supplemental Motion, as well as on the sanctions request from the Initial Motion. The Court denied the request to shorten the response time and hold an expedited hearing. In doing so the Court stated:

> The [Supplemental Motion] raises serious questions. For that reason, the Court will give each of the [Respondents] a full opportunity to address the issues in the [Supplemental Motion]. While the Court agrees with the Trustee that the [Supplemental Motion] should be timely resolved, the need for expediency does not override the gravity of the allegations, and therefore the need to give the [Respondents]

adequate time to respond.[10]

The Court set the time for the Respondents to object or otherwise respond to the Supplemental Motion to June 18, 2007. Id. On that day, the Debtors filed a motion to extend the time to file a response to the Supplemental Motion to July 6, 2007. Docket No. 623. The Court granted that request. On July 6, 2007, rather than file an objection to the Supplemental Motion, the Debtors filed an emergency motion to stay the hearing on the sanctions requests pending their appeal of the Injunction Order. Docket No. 630. The Court struck the emergency stay request because of the Debtors' continued refusal to comply with this Court's order to file with the Court their current address or to seek a waiver of their obligation to do so under Fed. R. Bank. P. 4002(5). Docket No. 633. See also Docket No. 603.

On July 13, 2007, the Debtors filed an emergency motion to continue the hearing on the Supplemental Motion and the sanctions request in the Initial Motion, which was set for July 18. Docket No. 635. The Debtors contended that they had so many filing obligations in their various appeals in the bankruptcy case that they could not adequately prepare for the July 18 hearing, and that the matter should be continued pending the District Court's review of the Memorandum Decision and the Injunction Order, which the Debtors had appealed. Id. The Court denied the request for a continuance. Docket No. 636. [11]

Finally, in both the Initial Motion and the Supplemental Motion, the Trustee gave notice that he was seeking an order of contempt and severe sanctions,

and requested the Court to consider the Debtors' conduct throughout this case when imposing sanctions. The Trustee provided ample notice that he was seeking, among other relief, that the Court (1) hold the Respondents in contempt for their actions; (2) impose compensatory and punitive damages against the Respondents; (3) incarcerate the Respondents until they pay the damages imposed; (4) deny the Debtors their discharge for their refusal to obey a lawful order of this Court.

II. CONCLUSIONS OF LAW

A. NOTICE TO THE RESPONDENTS THAT THE TRUSTEE SEEKS A CONTEMPT ORDER AND SANCTIONS

As stated above, the Trustee made it clear that he was seeking an order of contempt and sanctions against each of the Respondents. In issuing the Memorandum Decision, the Court specifically deferred ruling on the contempt and sanction request pending a hearing. Further, as described more fully in the Findings of Fact, Section I.B.5., the Court did not grant the Trustee's request to shorten the time for the Respondents to file their objections to the Supplemental Motion and to expedite the hearing on the contempt and sanctions request. The Court set a reasonable briefing and hearing schedule specifically to provide a full opportunity for the Respondents to respond. In doing so, the Court gave notice to the Respondents that it considered the Trustee's allegations to raise serious questions and grave concerns. Id. The Court granted the Respondents' request for an extension of time to file an objection or

response and gave them more than 30 days notice of the hearing.

The Court finds and concludes that the Respondents were given full and fair notice of the contempt proceedings and full and fair opportunity to respond and participate in these proceedings.

B. SANCTIONS FOR WILLFULLY VIOLATING THE AUTOMATIC STAY AND THE BARTON DOCTRINE

With some exceptions, the filing of a bankruptcy petition "...operates as a stay, applicable to all entities, of...any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate..." 11 U.S.C. § 362(a)(3). "The purpose of the automatic stay is to preserve what remains of the debtor's insolvent estate and to provide a systematic equitable liquidation procedure for all creditors, secured as well as unsecured, thereby preventing a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts." United States v. Gold (In re Avis), 178 F.3d 718, 721 (4th Cir. 1999).

Section 362(h)[12] provides that "...an individual injured by any willful violation of a stay provided by this section, shall recover actual damages, including costs and attorneys fees, and, in appropriate circumstances, may recover punitive damages." To establish that a violation of the automatic stay was willful, a party need only show that the violator knew of the bankruptcy case and intentionally committed the act that violated

the automatic stay. Thompson-Mendez v. St. Charles at Olde Court P'ship, LLC (In re Thompson-Mendez), 321 B.R. 814, 820 (Bankr. D. Md. 2005) ("'...a violation is considered willful if the creditor knew of the automatic stay and intentionally performed the actions that violated the stay." (quoting Ford Motor Credit Co. v. Hemsley (In re Bennett), 317 B.R. 313, 316 (Bankr D. Md. 2004)); See also, Budget Serv. Co. v. Better Homes, 804 F.2d 289, 292-293 (4th Cir. 1986) (affirming the granting of sanctions under Section 362(h) and stating that "[t]here was ample evidence in the record to support the conclusion that appellants knew of the pending petition and intentionally tried to repossess the vehicles in spite of it."). "...[A]ny deliberate act taken in violation of a stay the actor knows to be in existence justifies an award of actual damages. An additional finding of maliciousness or bad faith warrants the further imposition of punitive damages . . ." Bunch v. Hopkins Savs. Bank (In re Bunch), 249 B.R. 667, 671 (Bankr. D. Md. 2000) (quoting In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1105 (2d Cir. 1990)).

The Court may also award sanctions for violations of the Barton Doctrine. See e.g., In re DeLorean Motor Co., 991 F.2d 1236, 1242 (6th Cir. 1993) ("The Trustee is entitled to the damages that he requested in Count I [violation of the Barton Doctrine as interpreted by the court] of his complaint. Furthermore, the Trustee must be given the opportunity to prove the amount of the damages incurred as a result of having to defend against the Weitzman Action including the necessity of the filing of the Trustee's complaint with the Bankruptcy Court...")

In the Memorandum Decision, the Court found and

concluded that the Respondents violated the automatic stay and the Barton Doctrine by filing the Complaint. The Court did not address whether the violation was willful, as it deferred ruling on the sanction request in the Initial Motion. The Court now concludes that the violation was willful, since the Debtors plainly knew of the existence of the automatic stay from their long history of this case. The docket record in these bankruptcy cases is replete with filings concerning the automatic stay. See e.g., Docket Nos. 341, 314, 227, 177, 162, 154, 135 and 74 in Case No. 01-25006.

With respect to the Byrds' Sons, Ralph Byrd, a Maryland attorney, represents them in the state court action and signed the Complaint and Amended Complaint on their behalf. Ralph T. Byrd's knowledge of the automatic stay is imputed to them as their attorney. It is well established that a party is bound by the acts or omissions of his attorney and is charged with knowledge of those facts that were known to the attorney. Link v. Wabash R.R., 370 U.S. 626, 633-634, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962).

> Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'

Id. at 633-634 (quoting Smith v. Ayer, 101 U.S. 320, 326.

n10, 25 L.Ed. 955 (1880); Daniel v. Cantrell, 375 F.3d 377, 386 (6th Cir. 200), cert. den. Daniel v. Cantrell, 543 U.S. 1060, 125 S.Ct. 874, 160 L.Ed.2d 787 (2005); Bruce J. Pierce & Assoc., Inc. v. Resolution Trust Corp., 987 F.2d 663, 665 (10th Cir. 1993) ("The district court properly imputed to plaintiff the information admittedly received by plaintiff's counsel.").

Accordingly, for the Respondents' willful violation of the automatic stay by filing the Complaint, the Court will award the Trustee his costs of $14,281.45 as actual damages, jointly and severally against each of the Respondents.

The Court further finds and concludes that the Respondents again violated the automatic stay and the Barton Doctrine by filing and serving the Second Amended Complaint. The Second Amended Complaint contains much of the same factual allegations as the Complaint, and also seeks a constructive trust on the Property. It requests an order that the Trustee convey all of his rights in the Property to the Debtors. It seeks damages against the Bankruptcy Defendants in the amount of $5 million compensatory and $50 million punitive for actions they took in the administration of the bankruptcy case. In the Second Amended Complaint, the Respondents did not remove any of the offending allegations and claims from the Complaint, but only added allegations that do not change the character of the claims. For the same reasons set forth in the Memorandum Decision, the Court finds and concludes that the filing and the serving of the Second Amended Complaint violates the automatic stay and Barton Doctrine. See Memorandum Decision at pp. 11-21.

At the time the Respondents filed and served the Second Amended Complaint, the Court had issued the Memorandum Decision which expressly stated that the filing of the Complaint (containing allegations substantially similar to those in the Second Amended Complaint) constituted a violation of the automatic stay and the Barton Doctrine. The Memorandum Decision and Injunction Order were served on the Respondents at the address set forth on the Complaint and Second Amended Complaint, see e.g., Docket No. 580, and were also served on the Debtors at both addresses on file with the Court. Docket Nos. 576, 577, 590. Furthermore, on June 4, 2007, the Debtors filed a motion to reconsider the Injunction Order, Docket No. 600, and therefore the record establishes that they unquestionably had actual knowledge of the Injunction Order by that date.[13]

Nevertheless, they served the Second Amended Complaint on the Trustee, Mr. Schlossberg and Shulman Rogers after that date. Accordingly, the Court finds and concludes that the Respondents filed and served the Second Amended Complaint with knowledge of the Memorandum Decision and Injunction Order, and therefore the Respondents' violation of the automatic stay and Barton Doctrine resulting from the filing and serving of the Second Amended Complaint was willful, malicious and in bad faith.

For the Respondents' willful and malicious violations of the automatic stay and the Barton Doctrine by filing and serving the Second Amended Complaint, the Court will award the Trustee actual damages of $7,895.50 jointly and severally against each of the Respondents.

In addition, the Court will impose punitive damages under Section 362(h) in the amount of $23,686.50 jointly and severally against the Debtors because the violations of the automatic stay were malicious and in bad faith. Punitive damages under Section 362(h) are especially appropriate here for several reasons. First, the violation of the automatic stay that resulted from serving and filing the Second Amended Complaint was particularly egregious considering that the actions were taken after the Court expressly held that those actions would violate the stay. Second, as set forth in the Findings of Fact at Section I.B.4., throughout this case, the Debtors have caused substantial loss to this estate or required the Trustee to incur needless and burdensome costs by (1) generating unnecessary and unsuccessful litigation matters that have resulted in administrative costs far in excess of what this case would otherwise warrant; and (2) allowing the Property to deteriorate in value and condition, as determined by two different bankruptcy judges; (3) failing to comply with a debtors' responsibilities under the Bankruptcy Code by refusing to produce requested documents, refusing to turnover property of the estate, and requiring the Trustee to obtain writs of assistance on several different occasions to enable the Trustee to perform his duties. The Court will not impose punitive damages against the Byrds' Sons.

C. SANCTIONS FOR CIVIL CONTEMPT

A Bankruptcy Court has the power, pursuant to 11 U.S.C. § 105(a) to hold a party in civil contempt and award sanctions. See In re Walters, 868 F.2d 665 (4th Cir. 1989).

> To establish civil contempt, a movant must show each of the following elements by clear and convincing evidence:
> (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
> (2) ...that the decree was in the movant's "favor";
> (3) ...that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive) of such violations; and
> (4) ...that [the] movant suffered harm as a result.

JTH Tax, Inc. v. H&R Block E. Tax Servs., 359 F.3d 699, 705 (4th Cir. 2004) (quoting Ashcraft v. Conoco, Inc., 218 F.3d 288, 301 (4th Cir. 2000)). The purpose of a contempt sanction is "...remedial and intended to coerce the contemnor into compliance with court orders or to compensate the complainant for losses sustained..." as a result of the contemptuous conduct. Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 822 (4th Cir. 2004) (quoting Buffington v. Baltimore County, 913 F.2d 113, 133 (4th Cir. 1990)). To that end, a "court has broad discretion to fashion an appropriate coercive remedy in a case of civil contempt, based on the nature of the harm and the probable effect of alternative sanctions." United States v. Darwin Constr. Co., 873 F.2d 750, 756 (4th Cir. 1989).

The Court finds and concludes that the Respondents willfully violated the Injunction Order. In it, the Court expressly enjoined the Respondents from, among other things:

- filing, pursuing or maintaining any action in

state or federal court seeking to obtain possession, custody, control of or any interest in the Property; filing, pursuing or maintaining any action in state or other federal court seeking any remedy against the Bankruptcy Defendants for actions they took in the performance of their duties in this bankruptcy proceeding, or in the predecessor bankruptcy case of Ralph T. Byrd, Case No. 01-25006, without first seeking and obtaining leave of this Court;

- taking any other action that has the intent or effect of hindering, delaying or preventing the sale of the Property by the Trustee pursuant to the order of this Court.

Injunction Order at p. 2. The Respondents violated each of these provisions by filing and serving the Second Amended Complaint which (1) sought a constructive Trust over the Property; (2) sought damages against the Bankruptcy Defendants for actions they took in the administration of the estate without seeking leave of court; and (3) naming the Clonchs as defendants. The Debtors did so with actual knowledge of the Memorandum Decision and Injunction Order. The Byrds' Sons were represented by Ralph T. Byrd in the state action; he signed the Second Amended Complaint as their counsel. Debtor Ralph T. Byrd's knowledge of the Memorandum Decision and Injunction Order is imputed to the Byrds' Sons. See supra at p. 19.

Without diminishing the significance of the Respondents' actions towards the Bankruptcy Defendants, the Court finds that the Respondents'

inclusion of the Clonchs as defendants in the Second Amended Complaint to be particularly malicious. The Clonchs purchased the Property pursuant to an express order of this Court. They are innocent third parties who have done nothing other than to buy the Property, and the Second Amended Complaint does not allege otherwise. For this they have been named as defendants in a lawsuit seeking $5 million in actual damages and $50 million in punitive damages. The administration of bankruptcy cases depends heavily on the effectiveness and validity of bankruptcy court order authorizing trustee sales. If buyers become subject to in terrorem lawsuits seeking tens of millions of dollars in damages merely by purchasing estate assets, the system would break down.

Accordingly, each of the Respondents is held in civil contempt for willfully and maliciously violating the Injunction Order by filing and serving the Second Amended Complaint and the Court will award the Trustee compensatory monetary sanctions. The Trustee expended $7,895.50 to defend against the filing of the Second Amended Complaint. Therefore, the Court will award the Trustee his costs of $7,895.50 as compensatory civil contempt damages jointly and severally against each of the Respondents. However, the same actions that constitute the violations of the automatic stay and the Barton Doctrine also constitute the violation of the Injunction Order. Therefore, the contempt award of $7,895.50 for the violation of the Injunction Order will not be cumulative to the award for the violation of the automatic stay and the Barton Doctrine, and the Trustee shall be entitled to collect $7,895.50 only once.

D. DENIAL OF THE DEBTORS' DISCHARGE

The Trustee requests that the Court deny the Debtors' discharge. Under Section 727 "the court shall grant the debtor a discharge" unless one of twelve exceptions is present. See 11 U.S.C. § 727(a)(1)-(12). "Obtaining a discharge is the key component of the 'fresh start' a bankruptcy proceeding is designed to give a debtor." Missouri ex rel. Nixon v. Foster (in re Foster), 335 B.R. 709, 714 (Bankr. W.D. Mo. 2006). To that end, "the provisions denying a discharge to a debtor are generally construed liberally in favor of the debtor and strictly against the creditor." Collier on Bankruptcy P 727.01[4] (15th ed. Rev. 2006). The party seeking the denial of the debtors discharge has the burden of proving the claim by a preponderance of the evidence. Farouki v. Emirates Bank Int'l, 14 F.3d 244, 250 (4th Cir. 1994).

In the instant case, the Trustee seeks denial of the Debtors' discharge as a sanction for their willful and malicious actions. Pursuant to Sections 727(a)(6)(A), a debtor shall be denied a discharge if:

> the debtor has refused, in the case – (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

11 U.S.C. § 727(a)(6)(A).

Section 727(a)(6)(A) provides for the denial of a debtor's discharge if that debtor "refuses" to obey a lawful court order. The term "refuse" is not defined in the Bankruptcy Code. "Refuse" means "to deny, decline, reject." BLACK'S LAW DICTIONARY 887

(6th ed. 1991). "Fail is distinguished from 'refuse' in that 'refuse' involves an act of the will, while 'fail' maybe an act of inevitable necessity." Id. Nonetheless, Courts diverge on whether the statutory term "refused" requires an element of willfulness or intent. See In re Gentry, 275 B.R. 747, 754 (Bankr. W.D. Va. 2001)(identifying the diverging opinions); Foster, 335 B.R. at 716 (finding that a court must find that a debtor's lack of compliance with a court order was willful and intentional because "[t]he term used in the statute [11 U.S.C. § 727(a)(6)] is 'refused' not 'failed.'"); Hunter v. Magack (In re Magack), 247 B.R. 406, 409-10 (Bankr. N.D. Ohio 1999)(holding that "the use of the word 'refused' in § 727(a)(6) denotes that an action brought under this section should, in substance, simply be treated as a civil contempt proceeding thereby implicitly negating the intent requirement from the word 'refuse' as willfulness is not an element to a proceeding in civil contempt.").

The Court need not resolve whether a claim under Section 727(a)(6)(A) can be made out without a showing of willfulness, because the Court finds and concludes that the Debtors willfully violated the Injunction Order. "The word 'willful' is widely used in the law, and, although it has not by any means been given a perfectly consistent interpretation, it is generally understood to refer to conduct that is not merely negligent." McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988). "In common usage the word 'willful' is considered synonymous with such words as 'voluntary,' 'deliberate' and 'intentional.'" Id. Willful is defined by Black's Law Dictionary as "proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass;

designed; intentional; purposeful; not accidental or involuntary." BLACK'S LAW DICTIONARY 1103 (6th ed. 1991). A debtor's willful intent to disobey a court order can be inferred from his conduct. See, In re Dowell, 61 B.R. 75, 78 (Bankr. W.D. Mo. 1986) ("If the evidence establishes that the debtor knew or should have known of the multitude of orders and notices sent to her and disregarded them, it could hardly be said that her failure and refusal to attend or to perform other duties imposed by the court was inadvertent or simply by mistake.").

For the reasons set forth above, the Court finds that the Debtors willfully failed to obey the Injunction Order. The Debtors were served with the Injunction Order eleven days before they filed the Second Amended Complaint. The Debtors made filings in this Court which establish that they knew of the Injunction Order more than a month before they served the Second Amended Complaint on the Trustee, Mr. Schlossberg and Shulman Rogers. These findings plainly establish that the Debtors willfully violated the Injunction Order.

In denying the Debtor's discharge, the Court takes into account that the Injunction Order is the third order of this Court that the Debtors have willfully violated since January 30, 2007. First, contemporaneous herewith, the Court is entering the Memorandum Opinion Awarding Sanctions for the Debtors' Failure to Produce Documents and Finding the Debtors in Contempt for Violating the Production Order (the "Contempt Opinion"). There, the Court finds and concludes, among other things, that the Debtors willfully violated the Order Granting Trustee's Motion

to Compel Production of Documentation and Information entered by this Court on December 8, 2007 (the "Production Order") (Docket No. 477). Based on the Contempt Opinion, the Court is entering an order finding the Debtors again in contempt and awarding sanctions in favor of the Trustee. The Contempt Opinion and order are made part of the record herein.

Second, on June 6, 2007 the Court ordered the Debtors to submit their current address to the Court, as required by Fed. R. Bankr. P. 4002(5), because they continued to use an outdated address in their filings. Docket No. 603. The Debtors submitted a post office box address, which does not comply with the Court's order or Bankruptcy Rule 4002(5), and have failed to submit their current address or request a waiver of the obligation to do so, as required by the Court. Indeed, as recently as September 12, 2007, the Debtors' continued to make filings in this Court that incorrectly list the Property as their address. See e.g., Docket No. 668.

Finally the Court will address the procedural context in which the discharge is denied. Ordinarily, an objection to a debtor's discharge is brought by adversary proceeding. Fed. R. Bankr. P. 7001(4). In the Initial Motion and the Supplemental Motion, the Trustee sought the denial of the Debtors' discharge as a sanction for their conduct in the case and because the Debtors willfully violated the Injunction Order. Similarly, in the motions that are resolved in the Contempt Opinion, the Trustee also sought the denial of the Debtors' discharge as a sanction for their conduct in the case and because the Debtors willfully violated the Production Order. The issue of whether the Debtors

willfully violated these Court orders was specifically raised and actually litigated between the Debtors and the Trustee. That issue - whether the Debtors willfully violated the Injunction Order or the Production Order - is identical to the issue that would be litigated in an action seeking denial of discharge under Section 727(a)(6)(A). Accordingly, if the Trustee were to prosecute an adversary proceeding seeking the denial of the Debtors' discharge pursuant to Section 727(a)(6)(A) for the Debtors willful violation of the Injunction Order or the Production Order, the Debtors would be collaterally estopped to relitigate that issue, in the event this Court's order becomes final. See Ariz. v. Cal., 530 U.S. 392, 414, 120 S.Ct. 2304, 147 L.Ed.2d 374 (2000) (collateral estoppel, or issue preclusion, prohibits a party from relitigating an issue "'when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.' Restatement (Second) of Judgments § 27, p. 250 (1982)")

The Court will not require the Trustee to pursue the denial of discharge in an adversary proceeding. Such a requirement would be a waste of estate resources that have already been unnecessarily depleted as a result of the Debtors' misconduct. Section 105(a) of the Bankruptcy Code authorizes the Court to enter any order necessary or appropriate to carry out the provisions of the Bankruptcy Code or to prevent an abuse of process.[14] The United States Supreme Court recently affirmed the "...broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent abuse of process' described in Section 105(a) of the [Bankruptcy] Code...." Marrama v. Citizens Bank, 127 S.Ct. 1105, 1112; 166 L.

Ed. 2d 956 (2007). Moreover, it is likely that, even absent Section 105(a), the "inherent power of every federal court to sanction 'abusive litigation practices'" would provide adequate justification in support of an order denying discharge. Id. Thus under the unique circumstance of this case, the Court will not require the Trustee to pursue the denial of the Debtors' discharge in a separate adversary proceeding.[15]

III. CONCLUSION

For the forgoing reasons, the Court finds and concludes that the Respondents (1) willfully violated the automatic stay by filing the Complaint; (2) violated the Barton Doctrine by filing the Complaint; (3) willfully and maliciously violated the automatic stay by filing and serving the Second Amended Complaint after the Memorandum Decision and Injunction Order were issued; (4) willfully and maliciously violated the Barton Doctrine by filing and serving the Second Amended Complaint after the Memorandum Decision and Injunction Order were issued; and (5) willfully and maliciously violated the Injunction Order by filing and serving the Second Amended Complaint after the Memorandum Decision and Injunction Order were issued.

Accordingly, the Court will issue monetary sanctions in the amount of:

> (1) $14,281.45 against the Respondents jointly and severally as actual damages for filing the Complaint in violation of the automatic stay and the Barton Doctrine;
> (2) $7,895.50 against the Respondents jointly and

severally as a compensatory civil contempt sanction for violating the Injunction Order and as actual damages awarded for the second violation of the automatic stay and the Barton Doctrine for filing and serving the Second Amended Complaint;
(3) $23,686.50 against the Debtors jointly and severally as a punitive damage for willfully and maliciously violating the automatic stay by filing and serving the Second Amended Complaint.

Additionally, the Court will issue an order denying the Debtors' discharge.

Footnotes

1As discussed at length in the Memorandum Decision, Docket No. 573, the Barton Doctrine holds that a bankruptcy trustee cannot be sued for claims arising from the administration of the estate without a plaintiff first seeking leave of the bankruptcy court.

2Among other reasons given by the Court for its decision: (1) the Debtors were given 10 months notice from the time the case was converted to chapter 7 to turnover the Property to the Trustee, which was a substantial and adequate amount of time to relocate; and (2) the Property was in deplorable and deteriorating condition and the estate was being harmed by delay.

3 The allegations of the Complaint are summarized in the Memorandum Decision. See Memorandum Decision at pp. 8-10. Further, the Debtors had submitted an unsigned amended complaint and the Court was unsure

whether the Respondents had filed the unsigned amended complaint. In the Memorandum Decision, the Court reviewed the unsigned amended complaint and determined that its decision would be no different whether or not the unsigned amended complaint had been filed. Stated otherwise, the allegations in the unsigned amended complaint were not sufficiently different from the Complaint to warrant a different result.

4Ralph Byrd is an attorney and signed the Complaint on behalf of all of the plaintiffs. In the Debtors' opposition to the Initial Motion, Ralph T. Byrd stated that he is only representing himself and Beverly Byrd in this bankruptcy case, and not the Byrds' Sons.

5The Injunction Order expressly preserved the rights of the Respondents to appeal or otherwise seek relief from the Injunction Order in the United States District Court for the District of Maryland, the United States Court of Appeals for the Fourth Circuit, or the United States Supreme Court.

6The amount of fees incurred by the Trustee after June 12, 2007, was not available at the time of the July 18 hearing. After the hearing and while the matter was under advisement, counsel for the Trustee filed a fee application. Docket No. 660. As is customary, counsel submitted with the fee application billing records in support of the fees. The application contains the updated billing records of the amount of fees incurred on the Supplemental Motion after June 12, 2007, which were not available as of the July 18, hearing. See Docket No. 660, Exhibit 3 page 16 of 21. This amount is $5,215.00. The Court will consider the record of the

hearing to be reopened to accept this supplemental information.

7See Docket No. 480 at p. 6.

8 The total docket entries in this case and in the predecessor case number 01-25006 now approach 1100, an absurdly high number for a case of this magnitude.

9Subsequently the Debtors argued that they did not violate the automatic stay by merely filing, as opposed to serving, the original Complaint. This claim has no merit considering that Section 362(a)(3) applies to "any act."

10Order Setting Briefing Schedule and Hearing on Trustee's Emergency Motion for Relief Due to Flagrant Violations of This Court's Order Entered May 18, 2007 at p. 3. Docket No. 601.

11The July 18 date had been set for more than a month. See Docket No. 612. The Debtors were aware of the July 18 hearing date at least by June 18, 2007; they referenced it in their motion to extend time to file an objection to the Supplemental Motion, which they filed on that date. See ¶ 2 of Docket No. 623. Further, considering that the Debtors appeal virtually every significant decision of this Court, this bankruptcy case would be bogged down even more than it is if the Court were to defer hearings based on the Debtors' appellate briefing schedule.

12The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), P.L. 109-8, 119 Stat. 23, relettered this provision in Section 362(k)(1).

Because this case was filed prior to the effective date of BAPCPA, the Court will cite to the provision as previously codified. See, P.L. 109-8 § 1501.

13 The record is not clear on whether the Byrds' Sons had actual knowledge of the Injunction Order at the time the Second Amended Complaint was filed and served. The point is not determinative, however. Ralph Byrd, their attorney in the state court action, had actual knowledge of the Memorandum Decision and the Injunction Order, and his knowledge is imputed to them. See supra at p. 19.

14 11 U.S.C. § 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

15 The Trustee would not be time-barred to seek the denial of the Debtors' discharge. The prior trustee filed an adversary proceeding to deny Ralph Byrd's discharge, Case No. 02-01490, which has been stayed. The time to file an action denying Beverly Byrd's discharge has been extended on timely motion of the Trustee without objection by the Debtors. The Court notes, however, that even if the time period had run and the Debtors had been granted a discharge, Section

727(d)(2) provides that a discharge shall be revoked if the "debtor committed an act specified in [Section 727(a)(6)(A)]." 11 U.S.C. §727(d)(3).

8/13/2009 (48-1)
UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1521

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors.

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs - Appellants,

v.

JAMES M. HOFFMAN, Defendant – Appellee,

and

GREGORY P. JOHNSON, Trustee.

JUDGMENT

In accordance with the judgment of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

8/13/2009 (48-1)
UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1521

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors.

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs - Appellants,

v.

JAMES M. HOFFMAN, Defendant – Appellee,

and

GREGORY P. JOHNSON, Trustee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Alexander Williams, Jr., District Judge. (8:07-cv-01730-AW)

Submitted: July 10, 2009 Decided: August 13, 2009

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Ralph T. Byrd, Laytonsville, Maryland, for Appellants.

Stephen A. Metz; John D. Sadler, SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A., Rockville, Maryland; James M. Hoffman, GOREN, WOLFF & ORENSTEIN, LLC, Rockville, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Beverly and Ralph Byrd appeal from the district court's order affirming the bankruptcy court's order granting in part the bankruptcy trustee's emergency motion for relief from the automatic stay, declaring void the state court complaint filed by the Byrds, imposing an injunction, and denying their motion for reconsideration. We have reviewed the parties' briefs, the joint appendix, and the lower courts' opinions and orders and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Byrd v. Hoffman, No. 8:07-cv-01730-AW (D. Md. Mar. 31, 2008). We deny the Byrds' motion for oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Civil Action No. AW-07-1730
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT

BEVERLY BYRD, et al., Plaintiffs,

v.

JAMES M. HOFFMAN, et al., Defendants.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, IT IS this 31st day of March, 2008 by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the Amended Order of May 24, 2007, and the Order of June 7, 2007, of the Bankruptcy Court is hereby AFFIRMED;

2. That the Clerk of the Court CLOSE this case; AND

3. That the Clerk of the Court transmit a copy of this Memorandum Opinion and Order to all counsel of record.

/s/
Alexander Williams, Jr.
United States District Judge

Civil Action No. AW-07-1730
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DISTRICT

BEVERLY BYRD, et al., Plaintiffs,

v.

JAMES M. HOFFMAN, et al., Defendants.

MEMORANDUM OPINION

This appeal arises from the May 24, 2007[1] Amended Order of Thomas Catliota, United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"), Granting in Part Trustee's Emergency Motion for Relief from the Automatic Stay, Enjoining Respondents and Declaring Complaint Void in Part, and the June 7, 2007 Order Denying Reconsideration. The appeal has been fully briefed, and no hearing is deemed necessary. See Local Rule 105.6 (D.Md. 2008). For the reasons explained fully below, the Court AFFIRMS the Amended Order and Rulings of the Bankruptcy Court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellants Beverly Byrd and Ralph Byrd ("Appellants") are not unknown to this Court, having repeatedly filed eight appeals to the District Court and four appeals to the Fourth Circuit related to their bankruptcy matter.[2] The following facts are those pertinent to this appeal.

On December 14, 2001, an involuntary petition for Chapter 7 bankruptcy was filed against Appellants in the United States Bankruptcy Court for the District of Maryland. On June 25, 2004, the matter was converted to a Chapter 11 bankruptcy at Appellants' request.

On March 23, 2007, the bankruptcy Trustee filed a Motion for Order Authorizing Trustee to Enter into Sales Agreement and Approving Sale of Certain Real Property Free and Clear of All Liens, Claims, Interests, and Encumbrances ("Sale Motion") to get approval from the Bankruptcy Court to sell some of Appellants' property that formed part of the bankruptcy estate ("Property"). Appellants filed an opposition, and the Bankruptcy Court scheduled a hearing on the Sale Motion ("Sale Hearing") for April 23, 2007. At the Sale Hearing, the court approved the sale over Appellants' general objections and entered an Order approving the sale free and clear of all liens, claims, interests, and encumbrances ("Sale Order") on April 25, 2007.[3]

On the same day as the Sale Hearing, Appellants filed a complaint against the bankruptcy Trustee and other Defendants[4] in the Circuit Court for Montgomery County, alleging abuse of process and civil conspiracy and seeking the imposition of a constructive trust against the Property as a remedy, with the rights, title, and interest in the property to be conveyed to Appellants. Appellants apparently filed this complaint in response to the Trustee's correspondence with the Maryland Attorney Grievance Commission ("the Commission"). According to Appellant, the Trustee sent certain documents relating to the administration of the estate, which were provided by Appellant, to the

Commission and expressed his suspicions surrounding the documents' authenticity. As to the constructive trust claim, Appellants alleged in their state court complaint that the Trustee was preparing to sell the Property below market value in an effort to destroy Appellant Ralph Byrd's law practice. At the Sale Hearing, Appellants neither disclosed the filing of the state court complaint to the Bankruptcy Court nor objected to the sale of the Property free of their alleged constructive trust claim.

On May 7, 2007, the Trustee filed an Emergency Motion for Relief Due to Violations of the Automatic Stay ("Emergency Motion") in the Bankruptcy Court, seeking an injunction and sanctions against Appellants for violating the automatic stay and the Barton Doctrine by filing suit against the Trustee in state court. Appellants filed an opposition to the Emergency Motion, disputing that they violated the automatic stay or the Barton Doctrine and contended that their state court constructive trust claim survives the Sale Order.

On May 18, 2007, the Bankruptcy Court granted the Trustee's motion and ordered the Appellants enjoined from: (1) filing and pursuing any state or federal court action seeking any interest in the Property; (2) taking any action whatsoever to encumber the Property; (3) taking any action to hinder or prevent the sale of the Property; and (4) taking any action against the Trustee or the Trustee's counsel without first seeking leave of the bankruptcy court. The court also voided the state court complaint and expressly ordered that the sale of the Property continue free and clear of any constructive trust or other claims asserted by Appellants.[5]

On June 4, 2007, Appellants filed a Motion to Reconsider, which the Bankruptcy Court denied on June 7, 2007, finding no grounds for reconsideration. Appellants filed the instant appeal to this Court on July 17, 2007.

STANDARD OF REVIEW

This Court reviews the legal conclusions of the Bankruptcy Court de novo, but reviews its factual determinations for clear error. Butler v. Shaw, 72 F.3d 437, 441 (4th Cir.1996); Three Flint Hill Ltd. Pshp. v. Prudential Ins. Co. (In re Three Flint Hill Ltd. Pshp.), 213 B.R. 292, 297 (D. Md. 1997). On legal issues, this Court "must make an independent determination of the applicable law." In re Jeffrey Bigelow Design Group, Inc., 127 B.R. 580, 582 (D. Md. 1991), aff'd, 956 F.2d 479 (4th Cir. 1992). Moreover, a finding of fact is clearly erroneous "only when the reviewing court is left with the definite and firm conviction that a mistake has been committed." In re Broyles, 55 F.3d 980, 983 (4th Cir. 1995)(internal quotations omitted). Finally, the Bankruptcy Court's application of law to the facts is to be reviewed for abuse of discretion. In re Robbins, 964 F.2d 342, 354 (4th Cir. 1992) (decision to lift automatic stay).

ANALYSIS

I.

Appellants raise five issues on appeal. They first contend that they did not violate the automatic stay because they merely filed the state court complaint but never served the complaint on the Trustee. The Court rejects outright Appellants' argument on this point, as

Appellants' offer no case support for the proposition that there exists a legal distinction between filing and service of a complaint for the purposes of an automatic stay violation. According to the bankruptcy statute, the filing of a bankruptcy petition operates as a stay, applicable to all entities, of "(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate . . . ." 11 U.S.C. § 362(a)(3) (emphasis added). Initiating a lawsuit seeking a constructive trust against the property of a bankruptcy estate, as Appellants did here, qualifies as an "act" in violation of the automatic stay. See Amedisys, Inc. v. Nat'l Century Fin. Enters. (In re Nat'l Century Fin. Enters.), 423 F.3d 567 (6th Cir. 2005).

The Bankruptcy Court below relied on Amedisys in finding that the state court complaint violated the automatic stay, and, as a result of the violation, the Bankruptcy Court voided the state court complaint. In Amedisys, the Sixth Circuit affirmed the bankruptcy court's enforcement of the automatic stay against the creditor, which sought in a state court action to recover funds from the bankruptcy estate on a constructive trust theory. 423 F.3d at 573-75. The court affirmed the district court's conclusion that the creditor's constructive trust theory operated as an assertion of dominion over the estate funds, which formed part of the estate property. Id. at 575.

There is little distinction between the creditor's actions in Amedisys and Appellants' actions here. Here, as in Amedisys, Appellants initiated a lawsuit in state court seeking the transfer of title of the Property on a constructive trust theory. It is clear to the Court that

Appellants were attempting to assert dominion and control over the Property. Specifically, in the state court complaint, Appellants sought an order for the Trustee "to convey all of his right, title, and interest in the property . . . to [Appellants] free from all liens, mortgages and other encumbrances. . . ." See State Court Complaint at 16. Here, as in Amedisys, the Property undoubtedly forms part of the bankruptcy estate and any act to assert dominion over the property runs counter to the automatic stay. Given Appellants' actions in filing suit with the purpose of gaining control over the Property, and given that Appellants attempt to split hairs on the distinction between the "filing" and "serving" of a complaint without offering any support for their contention that violating the automatic stay necessitated serving the complaint on the Trustee, the Court finds no clear error in the Bankruptcy Court's conclusion that Appellants violated the automatic stay. Furthermore, the Court finds that there was no abuse of discretion in the Bankruptcy Court voiding the state court complaint as a result of Appellants' violation of the automatic stay.

II.

Appellants next contend that the Bankruptcy Court incorrectly concluded that they violated the automatic stay and Barton Doctrine because Appellants' state court complaint was filed as a defensive measure in response to a possible state court action by the Commission to seek disciplinary action against Appellant Ralph Byrd. As previously discussed, Appellants violated the automatic stay merely by filing suit in state court for the purpose of gaining control of the Property, and therefore the Court rejects this

argument as it relates to the automatic stay. If the Court followed Appellants' reasoning, it would, essentially, render meaningless the purposes of the automatic stay provision: keeping matters related to the property of the bankruptcy estate in the exclusive jurisdiction of the Bankruptcy Court.

The Barton Doctrine, so named after the United States Supreme Court case Barton v. Barbour, states that "leave of the appointing forum must be obtained by any party wishing to initiate an action in a non-appointing forum against a trustee for acts done in a trustee's official capacity." In re Silver Oak Homes, Ltd., 167 B.R. 389, 394 (Bankr. D. Md. 1994); see also In re DeLorean Motor Co., 991 F.2d 1236, 1240 (6th Cir. 1993) (citing Barton v. Barbour, 104 U.S. 126, 127 (1881)("before suit is brought against a receiver, leave of the court by which he was appointed must be obtained")). The Barton Doctrine applies to lawsuits against bankruptcy trustees, such that any party seeking to file suit against a trustee related to the trustee's administration of the estate must first seek permission of the bankruptcy court. Muratore v. Darr, 375 F.3d 140, 146 (1st Cir. 2004).[6]

In Muratore, the First Circuit affirmed the district court's dismissal of a bankruptcy debtor's lawsuit against the estate's trustee, which the debtor filed without seeking leave of the bankruptcy court. 375 F.3d at 143. The court found that the Barton Doctrine applied because the allegations against the trustee in the debtor's lawsuit, namely the trustee's failure to pay taxes and failure to file corporate returns, referred to the failure to perform the very acts the trustee was responsible for performing in his position as a Chapter

11 bankruptcy trustee. Id. at 145.

The First Circuit's decision in Muratore supports a similar conclusion here. The Bankruptcy Court found that the Trustee's actions, to which Appellants' suit was allegedly responsive, were done in the course of administering the bankruptcy estate and maintaining the bankruptcy case. See Memorandum of Decision at 17. Appellants' second amended state court complaint alleges only that the Bar Counsel of the Commission filed a complaint against Appellant Ralph Byrd based on its communications with, and documents received from, the Trustee. See State Court Complaint, ¶ 61. Appellants further allege that the Trustee communicated with the Commission in order to raise suspicions about the truthfulness of documents filed by Appellants per an order of the Bankruptcy Court. See Appellants' Brief at 18. Although the record does not indicate that the Trustee's administrative duties compelled him to communicate his suspicions to the Commission, there does seem to exist a nexus between the Trustee's actions and his duties as estate administrator because the effective administration of the estate would presumably depend, in part, on the authenticity of the documents.[7] As such, this Court finds no clear error in the Bankruptcy Court's finding that Trustee's actions were done in the course of administering the estate as the Court is not "left with the definite and firm conviction that a mistake has been committed." In re Broyles, 55 F.3d at 983. Therefore, the Bankruptcy Court did not commit clear error when it concluded that Appellants violated the Barton Doctrine by failing to seek leave before filing suit against the bankruptcy Trustee.

Even if the Bankruptcy Court had improperly applied the Barton Doctrine here, Appellants fail to provide any cases supporting their contention that filing a state court suit against a bankruptcy Trustee in response to correspondence between the Trustee and the Commission places their actions beyond the reach of the automatic stay or Barton Doctrine. Appellants' reliance on Fox & Co. v. Saxon Industries (In re Saxon Indus., Inc.), 43 B.R. 64 (Bankr. S.D.N.Y. 1984), fails in this regard because the facts and issues in that case are completely inapplicable to the facts and issues here. Saxon involved a group of accountants that filed an adversary proceeding in bankruptcy court seeking to lift the automatic stay in order to counterclaim against the debtor, who had brought suit against the accountants in federal court. In re Saxon, 43 B.R. at 65. The bankruptcy court lifted the automatic stay, finding that it would be inequitable to allow the debtor to use the automatic stay provision to prevent the accountants from counterclaiming. Id. at 67. Here, unlike in Saxon, Appellants' suit against the Trustee was not a counterclaim to a pending suit by the Trustee. Moreover, Saxon involved a party that sought to lift the automatic stay before filing a counterclaim, whereas Appellants here initiated the suit without first seeking permission from the Bankruptcy Court to lift the automatic stay or stay the application of the Barton Doctrine.

Likewise, Appellants' reliance on In re Briarwood Hills Associates, L.P., 237 B.R. 479 (Bankr. W.D. Mo. 1999), fails. In that case, an estate trustee sought to hold a creditor in contempt for violating the automatic stay after the creditor counterclaimed against the trustee in the trustee's contribution claim against the creditor in

bankruptcy court. In re Briarwood, 237 B.R. at 479-80. The bankruptcy court found that the automatic stay does not apply to proceedings in the bankruptcy court where the court has jurisdiction over the parties. Id. at 480. Moreover, the creditor's counterclaim in that case directly related to the allegations made against the creditor by the trustee, and courts have held that filing counterclaims in response to claims filed against a party by the trustee and which are related to the allegations made by the trustee does not violate the automatic stay. Id. at 480. Appellants here did not file their complaint in the Bankruptcy Court, nor was their suit responsive to a suit filed by the Trustee.

Finally, Appellants' reliance on In re Filby, 225 B.R. 532 (Bankr. D.N.H. 1998), likewise, fails. In that case, the bankruptcy court found that a creditor was not in violation of the automatic stay where its actions were responsive to orders by the state court in ongoing state court proceedings initiated before the debtor filed for bankruptcy. In re Filby, 225 B.R. at 535. Here, Appellants' actions were not ordered by any court nor were they required by any state court action initiated by the Trustee.

Furthermore, the Court is unconvinced that Appellants' actions in filing suit against the Trustee was the appropriate "response" to the Trustee's communications with the Commission. The Commission's proceedings are not conducted ex parte, and they allow parties to adequately respond and defend themselves to any allegations made against them. Appellant Ralph Byrd could have opposed the allegations against him in that more appropriate forum, which he ultimately did, rather than unnecessarily

filing a separate lawsuit in state court. Given Appellants' failure to seek leave from the Bankruptcy Court before filing suit against the bankruptcy Trustee and given that Appellants have failed to provide any support for their contention that their "responsive" suit places them outside of the reach of the automatic stay or Barton Doctrine, the Court finds that the Bankruptcy Court did not commit clear error by concluding that Appellants violated the automatic stay and Barton Doctrine by filing suit against the Trustee in state court.

III.

Appellants next argue that the success of their state court constructive trust claim was contingent on the state court's decision on their underlying abuse of process and civil conspiracy claims, and therefore their constructive trust claim was akin to a lis pendens – literally, "pending lawsuit" – the filing of which does not violate the automatic stay. In Maryland, the doctrine of lis pendens serves to give notice to all parties seeking to acquire property that such property is the subject of ongoing litigation and that the acquirer takes the property subject to the results of the litigation. Greenpoint Mortgage Funding, Inc. v. Schlossberg, 390 Md. 211, 223, 888 A.2d 297, 304 (2005). "[T]he doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered." Id. Even if the Court were to assume that Appellants' constructive trust claim was akin to a lis pendens, which Appellants assert without support, Appellants' reliance on Savers Federal Savings and Loan Ass'n v. McCarthy Construction Co.

(In re Knightsbridge), 884 F.2d 145 (4th Cir. 1989), fails to support their contention that any lis pendens here does not violate the automatic stay.

In Knightsbridge, a creditor filed a lis pendens and then later amended the lis pendens after the debtor filed for bankruptcy. In re Knightsbridge, 884 F.2d at 146. The Fourth Circuit held that an amendment to a lis pendens filing made after the debtor filed for bankruptcy did not violate the automatic stay where the original lis pendens filing was made before the bankruptcy petition was filed. In re Knightsbridge, 884 F.2d at 147. Indeed, seemingly in support of Appellants' contention here, the court found that the existence of an original or amended lis pendens does not violate the automatic stay provision, as it "is not within the eight [prohibited] categories of activity [as] proscribed by § 362(a)", but rather serves simply to "notice a distinct proceeding, without operating to satisfy or secure the claim that inspired it." Id. at 147-48. However, the underlying distinct proceeding in that case involved ongoing state court activity initiated before the debtor filed its bankruptcy petition, namely the imposition of a mechanic's lien against certain of the debtor's property that subsequent to the petition became part of the bankruptcy estate. Id. at 146. Here, Appellants' asserted lis pendens notices a state court proceeding that both the Bankruptcy Court and now this Court have found was initiated in violation of the automatic stay provision, since it sought to assert dominion over property of the estate in violation of 11 U.S.C. § 362 (a)(3). By extension, any lis pendens that may exist to notice that proceeding also violates the automatic stay. This Court, therefore, finds that the Bankruptcy Court did not err in concluding that Appellants violated the

automatic stay by filing a state court suit that included a constructive trust claim.

IV.

Appellants next make four arguments to support their contention that their constructive trust claim survives the Sale Order. Appellants first argue that the Bankruptcy Court incorrectly found that Appellants waived their constructive trust objection to the sale of the Property because under Maryland Rules 12-102(b),[8] Appellants gave adequate notice to the Bankrupcty Court of their constructive trust claim. Appellants' next three arguments rely on 11 U.S.C. § 363(f) to support their contention that their constructive trust claim survives the Sale Order. Section 363(f) states in relevant part:

> (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of interest.

11 U.S.C. § 363(f). First, Appellants contend that § 363(f)(1) applies to the sale here and that the doctrine of

lis pendens does not permit the sale of the property free and clear of Appellants' constructive trust claim. Second, Appellants argue that § 363(f)(2) allows their claim to survive because Appellants, an "entity" with an "interest"in the property, did not consent to the sale of the Property at the Sale Hearing. Third, Appellants argue that § 363(f)(4) allows their claim to survive the Sale Order because the lis pendens that resulted from their filing the state court complaint is not in bona fide dispute.

Crucial to Appellants' success in each of their arguments on this point is whether the doctrine of lis pendens even applies here. Maryland Rule 12-102(a) provides that the constructive notice rule "applies to an action filed in a circuit court . . . that affects title to . . . real property located in this State" and that such an action is one to which the doctrine of lis pendens applies. See Md. Code. Ann., Maryland Rules § 12-102(a) and (b)(2008). As previously noted, "the doctrine [of lis pendens] derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered." Greenpoint, 390 Md. At 223, 888 A.2d at 304. In this ongoing bankruptcy proceeding, the Bankruptcy Court retains exclusive jurisdiction, to the exclusion of other courts, over the Property that was the subject of Appellants' constructive trust claim. See 28 U.S.C. § 1334(e). Therefore, the Circuit Court in which Appellants filed their constructive trust claim against property subject to the Bankruptcy Court's exclusive jurisdiction could not acquire or exercise jurisdiction over the Property and could not make a ruling "affecting title to" the Property. Thus, the doctrine of lis pendens, and by

extension Rule 12-102(b), does not apply here either to give constructive notice to the Bankruptcy Court of Appellants' constructive trust claim or as "applicable nonbankruptcy law" that prohibits the sale of the Property free and clear of Appellants' constructive trust claim. Moreover, because of the Bankruptcy Court's exclusive jurisdiction over the Property, Appellants could not gain relief based on their constructive trust claim in the Circuit Court for Montgomery County. Therefore, Appellants' state court constructive trust claim is invalid.

The invalid nature of Appellants' constructive trust claim serves to dispense with Appellants' remaining arguments in support of survival of that claim. Without a valid constructive trust claim, Appellants cannot, as they contend, be considered an "entity with an interest in the Property" within the meaning of the statute, such that the Trustee needed to obtain their consent under § 363(f)(2) before selling the Property free and clear of all interests. Similarly, § 363(f)(4) is inapplicable because Appellants never had a legitimate interest that could be in bona fide dispute.

Even without the Court's independent grounds for reaching the conclusion that Appellants' constructive trust claim did not survive the Sale Order, this Court finds that the Bankruptcy Court did not commit clear error when it found that Appellants waived their constructive trust objection by failing to raise the objection at the Sale Hearing. The Fourth Circuit, in First Union Commercial Corp. v. Nelson, Mullins, Riley and Scarborough (In re Varat Enters., Inc.), 81 F.3d 1310 (4th Cir. 1996), held that a party in interest waived its objection to the debtor's reorganization plan when it

failed to raise the objection prior to or at the confirmation hearing, despite the party's ability to raise the objection at the hearing. In re Varat, 81 F.3d at 1317. Similarly, Appellants certainly could have raised their constructive trust objection at the Sale Hearing because Appellants knew of the objection prior to, when it was planning to file suit in state court, and at the sale hearing. As such, the Bankruptcy Court correctly found that Appellants waived their constructive trust objection. Accordingly, this Court finds that the Bankruptcy Court did not abuse its discretion when it ordered the sale of the Property to continue free and clear of Appellants' constructive trust claim.

V.

Finally, Appellants contend that the Bankruptcy Court erred by failing to conduct a hearing on its Motion for Reconsideration before finding that Appellants' "surreptitiously" filed their state court complaint, which was evidence of their bad faith. Appellants seem to suggest that the Bankruptcy Court improperly based its decision to deny the motion to reconsider on its finding that Appellants surreptitiously filed the complaint and acted in bad faith.[9]

Pursuant to Fed. R. Civ. P. 59(e), a Court can alter or amend a judgment in limited circumstances, namely (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Rule 59(e) motions should not be used to raise arguments which

could have been raised prior to the issuance of the judgment, nor should they be used to argue a case under a new legal theory that the party could have addressed in the first instance. Id; see also Royal Ins. Co. of Am. v. Miles & Stockbridge, P.C., 142 F. Supp. 2d 676, 677-78 n.1 (D. Md. 2001). Lastly, a "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly. Id. (internal citations omitted).

In reviewing Appellants' Motion for Reconsideration and the facts in support of it, the Court finds that the Bankruptcy Court was not in error by denying the motion or in declining to conduct a hearing or taking evidence. First, it is within the discretion of the Bankruptcy Judge whether a hearing on a motion is warranted, as motions can be decided on the pleadings and the memoranda filed by the parties. See B.R. Local Rule, 9013-1(b)(4) (2007). Second, the Bankruptcy Court denied Appellants' motion because it found "no valid grounds stated for reconsideration" since it had previously addressed Appellants' contention that their constructive trust claim survived the Sale Order. Since Appellants have not shown a change in the controlling law, accounted for unavailable evidence, or corrected a clear error of law, the Court finds that the Bankruptcy Court did not abuse its discretion in denying Appellants' Motion for Reconsideration. Moreover, the Court notes that the Bankruptcy Court made a reasonable inference as to the bad faith nature of Appellants' actions. Regardless of the ultimate validity of their constructive trust claim, Appellants never disclosed their claim to the Bankruptcy Court at the Sale Hearing despite knowing that such a claim would be pertinent to the issues discussed at the hearing and

could potentially disrupt or delay the sale of the Property. Such actions, in the eyes of this Court appear to have significant "trappings" of bad faith.[10]

CONCLUSION

Given Appellants' failure to succeed on any points they raise in this appeal, this Court AFFIRMS in full the decision of the Bankruptcy Court. An Order consistent with this Memorandum Opinion will follow.

March 31, 2008
/s/
Alexander Williams, Jr.
United States District Judge

Footnotes

1The Memorandum of Decision was issued on May 18, 2007.

2Appellants have filed the following District Court appeals: 02-CV-02675JFM; 03-CV-00600PJM; 04-CV-03312JFM; 05-CV-02389AW; 06-CV-00895AW; 06-CV-02704AW; 07-CV-00328AW; and 07-CV-01421AW. Appellants have filed the following appeals to the Fourth Circuit: 06-2042; 07-1126; 07-1138; and 07-1336.

3The Bankruptcy Court, in approving the sale, found that "the Trustee had properly exercised his business judgment in approving the sale; the sale of the Property as proposed was fair and reasonable; and the sale was being proposed for a sound purpose and in good faith." See Record Entry No. 573, Memorandum of Decision at 8.

4The other Defendants named in Appellants' Amended State Court Complaint included two former trustees of the bankruptcy estate; two law firms that represent consumer debt collection companies and several partners and associates of those firms; one law firm that represents creditors and U.S. bankruptcy trustees, and a partner of that firm; an Assistant Bar Counsel and investigator for the Attorney Grievance Commission of Maryland; and the persons who purchased the Property from the bankruptcy trustee.

5The Court issued its ruling in a Memorandum of Decision and Order on May 18, 2004. The Court subsequently issued an Amended Order on May 24, 2007, which is identical to the previous Order, except that it additionally enjoins Appellants from filing suit or maintaining any action against the Trustee's counsel, James M. Hoffman, and his law firm. This is also the Order from which Appellants' appeal is taken.

6The Bankruptcy Court noted that although the Fourth Circuit has not adopted the Barton Doctrine in a published opinion, it has done so in an unpublished opinion. See Gordon v. Nick, 162 F.3d 1155 (Table) (4th Cir. 1998), 96-08158, 1998 WL 559734, *2 (4th Cir. Sept. 2, 1998).

7In addition, the Court notes that members of the Bar, which includes Appellant Ralph Byrd, are required to maintain the highest levels of professionalism and candor with their fellow attorneys. Deceptive practices by attorneys are not to be tolerated.

8Md. Code Ann., Rules §12-102 (b) states, "in an action to which the doctrine of lis pendens applies, the filing of

the complaint is constructive notice of the lis pendens as to real property in the county in which the complaint is filed."

9Although not titled as such, the Court will consider Appellants' Motion to Reconsider as a one under Fed. R. Civ. P. 59(e), Motion to Alter or Amend a Judgment, and analyze it as such

10 This Court notes, as has been stated before in earlier decision, that Appellants have filed a barrage of pleadings in this bankruptcy matter, and the statements and inferences drawn by the Bankruptcy Court throughout these appeals suggest that Appellants' efforts have been designed to frustrate the judicial process.

Case No. 04-35620-TJC
Chapter 7 (Consolidated with No. 01-25006)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors

ORDER GRANTING IN PART TRUSTEE'S EMERGENCY MOTION FOR RELIEF FROM THE AUTOMATIC STAY, ENJOINING RESPONDENTS AND DECLARING COMPLAINT VOID IN PART

Before the Court is the Emergency Motion for Relief Due to Violations of the Automatic Stay (the "Motion") filed by Gregory P. Johnson (the "Trustee") on May 7, 2007. Docket No. 549. In the Motion the Trustee seeks, among other things, an injunction and sanctions against Ralph T. and Beverly S. Byrd (the "Debtors") and Stanton P. Byrd, Ralph Trevor Byrd and Mark S. Byrd (collectively with the Debtors, the "Respondents"). For the reasons stated in the Memorandum of Decision filed herewith, it is, by the United States Bankruptcy Court for the District of Maryland;

ORDERED, that the Motion is GRANTED in part and deferred in part; and it is further,

ORDERED, that the Respondents are hereby enjoined from filing, pursuing or maintaining any action in state or federal court, seeking to obtain possession, custody, control of or any interest in the property known as 4901 Sundown Rd, Laytonsville, MD 20882 (the "Property"); and it is further,

ORDERED, that the Respondents are hereby enjoined from taking any other action, including but not limited to, filing a lis pendens against the Property, seeking directly or indirectly to obtain possession, custody, control of or any interest in the Property or otherwise take any action that will encumber the Property; and it is further,

ORDERED, that the Respondents are hereby enjoined from taking any other action, including but not limited to, filing a lis pendens against the Property, that has the intent or effect of hindering, delaying or preventing the sale of the Property by the Trustee pursuant to the order of this Court; and it is further,

ORDERED, that the Respondents are hereby enjoined from filing, pursuing or maintaining any action in state or other federal court seeking any remedy against the Trustee, Mr. Roger Schlossberg, the initial Chapter 7 trustee in the predecessor bankruptcy case of Ralph Byrd, Case No. 01-25006, and Shulman, Rogers, Gandal, Pordy & Ecker, P.A., which serves as counsel to the Trustee and served as counsel to Mr. Schlossberg, for actions they took in the performance of their duties in this bankruptcy proceeding, or in the predecessor bankruptcy case of Ralph T. Byrd, Case No. 01-25006, without first seeking and obtaining leave of this Court; and it is further,

ORDERED, that the complaint filed in state court is void as a violation of the automatic stay to the extent it seeks to impose a constructive trust against the Property; and it is further,

ORDERED, that nothing in this order prevents the

Respondents from seeking relief in this Court in connection with any of the foregoing, or review of orders of this Court in the United States District Court for the District of Maryland, the United States Court of Appeals for the Fourth Circuit, or the United States Supreme Court; and it is further,

ORDERED, that any sale of the Property shall be free and clear of any and all claims by the Respondents for constructive trust or otherwise, and it is further

ORDERED, in order to supplement the relief awarded for the violation of the automatic stay by the Respondents as found in the Memorandum of Decision, the Court hereby declares the lis pendens filed by Respondents against the Property void and of no effect; and it is further

ORDERED, that a hearing on the Trustee's request for damages and sanctions for the Respondents' violations of the Barton Doctrine and the automatic stay will be set by the Court; and it is further

ORDERED, that the Court shall retain jurisdiction over the enforcement of this order or the enforcement of the previous order authorizing the sale of the Property; and it is further

ORDERED, that the Trustee shall serve a copy of this Order and the Memorandum of Decision on all Respondents and parties who were named as defendants in the Complaint.

5/18/2007 (573)
Chapter 7 (Consolidated with No. 01-25006)
Case No. 04-25620-TJC
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors

MEMORANDUM OF DECISION

Before the Court is the Emergency Motion for Relief Due to Violations of the Automatic Stay (the "Motion") filed by Gregory P. Johnson (the "Trustee") on May 7, 2007. Docket No. 549. In the Motion the Trustee seeks, among other things, an injunction and sanctions against Ralph T. and Beverly S. Byrd (the "Debtors") and Stanton P. Byrd, Ralph Trevor Byrd and Mark S. Byrd (collectively with the Debtors, the "Respondents"). The Trustee seeks this relief for two reasons. First, the Trustee contends that the Respondents violated the automatic stay by filing a complaint in state court seeking, inter alia, to impose a constructive trust on the property known as 4901 Sundown Rd, Laytonsville, MD 20882 (the "Property"). Second, the Trustee contends that the Respondents violated the Barton Doctrine[1] by filing and maintaining the state court action against the Trustee, Mr. Roger Schlossberg, the initial Chapter 7 trustee in the predecessor bankruptcy case of Ralph Byrd, Case No. 01-25006, and Shulman, Rogers, Gandal, Pordy & Ecker, P.A., which serves as counsel to the Trustee and served as counsel to Mr. Schlossberg. The Trustee seeks compensatory and punitive damages against the Respondents for their willful violations of the automatic stay and the Barton Doctrine. The

Debtors have filed an opposition to the Motion, and assert that they have not violated the automatic stay, that the claims in the state court complaint do not violate the Barton Doctrine, and that their claim for a constructive trust against the Property survives this Court's prior order authorizing the sale of the Property free and clear of all liens, claims, interests and encumbrances.

The Trustee sought an emergency hearing on the Motion, alleging that Respondents' state law complaint, and a lis pendens they filed against the Property in conjunction with the complaint, has disrupted the pending sale of the Property previously authorized by this Court. The Trustee alleges that the sale is scheduled to close by May 18, 2007, but the sale is jeopardized by the Respondents' actions.

On May 9, 2007 the Court entered an order granting the Trustee's motion to shorten the time to respond to the Motion to May 14, 2007, and initially set an emergency hearing on the Motion for May 16, 2007. The Court then rescheduled the hearing for May 23, 2007 to accommodate Mr. Byrd's schedule. However, the Court has reviewed the briefs, all of the exhibits submitted therewith, and the pertinent authorities. In particular, the Debtors do not dispute that they filed the state court complaint that is the subject of the Motion. The only dispute between the parties for purposes of this ruling is the legal consequence of that filing. Accordingly, oral argument is deemed unnecessary because the facts and legal arguments are adequately presented in the parties' briefs and the exhibits submitted in support, and argument would not aid in the decisional process. See Local Rule 9013-

1(b)(4).

For the reasons stated herein, the Court finds and concludes that (1) this Court has exclusive jurisdiction over the Property – which is unquestionably property of the bankruptcy estate in this case – pursuant to 28 U.S.C § 1334(e); (2) Respondents' effort to obtain a constructive trust over the Property is a violation of the automatic stay of 11 U.S.C. § 362(a)(3); and (3) the Respondents' lawsuit against the Trustee, the predecessor trustee, and their counsel in state court for actions taken in the performance of the trustees' duties is a violation of the Barton Doctrine.

Accordingly, the Court will enter an order (1) enjoining the Respondents from filing, pursuing or maintaining any action in state or federal court, seeking to obtain possession, custody, control or any interest in or to the Property; (2) enjoining the Respondents from taking any other action, including but not limited to, filing a lis pendens against the Property, seeking directly or indirectly to obtain possession, custody, control or any interest in or to the Property or otherwise taking any action that will encumber the Property; (3) enjoining the Respondents from taking any other action, including but not limited to, filing a lis pendens against the Property, that has the intent or effect of hindering, delaying or preventing the sale of the Property by the Trustee pursuant to the order of this Court; (4) enjoining the Respondents from filing, pursuing or maintaining any action in state or other federal court seeking a remedy against the Trustee, the predecessor trustee or their counsel, for actions they have taken in the performance of their duties in this bankruptcy proceeding, or in the predecessor bankruptcy case of

Ralph Byrd, Case No. 01-25006, without first seeking and obtaining leave of this Court; and (5) that declares that the complaint filed in state court is void as a violation of the automatic stay to the extent it seeks to impose a constructive trust against the Property. The order shall provide, however, that the Respondents shall not be prohibited from seeking relief in this Court in connection with any of the foregoing, or review of orders of this Court in the United States District Court for the District of Maryland, the United States Court of Appeals for the Fourth Circuit, or the United States Supreme Court. Finally, the Court will set for hearing the Trustee's request for damages and sanctions for the violations of the Barton Doctrine and the automatic stay.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157(a), and Local Rule 402 of the United States District Court for the District of Maryland. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) & (O). The following constitutes the Court's findings of fact and conclusions of law:

I. FINDINGS OF FACT

A. PROCEDURAL BACKGROUND

This case, and its predecessor bankruptcy case of Ralph Byrd, Case No. 01-25006, has a long and protracted history that spans more than five years. The Court previously entered a memorandum of decision that recounted much of the entire history of this case. See, Memorandum of Decision Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons

and Property from 4901 Sundown Road, Laytonsville, MD, Docket No. 480 (the "Memorandum of Decision") at p. 2-7. Thus, only the procedural background pertinent to the Motion will be repeated here.

On December 14, 2001, Platinum Financial Services Corp. filed an involuntary petition against Mr. Byrd under Chapter 7 of the Bankruptcy Code, initiating Case No. 01-25006. On July 17, 2002, this Court entered an order for relief under Chapter 7 and Mr. Roger Schlossberg was appointed the Chapter 7 Trustee the next day (the "First Chapter 7 Trustee"). On January 24, 2003, the District Court reversed the entry of the order for relief. Thereafter, this Court entered an Order Staying All Matters and Continuing All Hearings on April 15, 2003. On February 11, 2004, the United States Court of Appeals for the Fourth Circuit reversed and remanded the District Court's decision reversing the entry of the Order for Relief.

On June 25, 2004, this Court entered an order converting the case from Chapter 7 to Chapter 11 at Mr. Byrd's request. Docket No. 183 in Case No. 01-25006. On July 23, 2004, the Trustee was appointed the Chapter 11 trustee. Beverly Byrd, Ralph Byrd's wife, filed her petition under Chapter 13 on November 11, 2004, thus initiating Case No. 04-35620. The Trustee, then serving as the Chapter 11 trustee in Mr. Byrd's case, filed a motion to substantively consolidate Ralph's and Beverly's bankruptcy proceedings into Case No. 04-35620. That motion was granted with the consent of the Debtors on January 12, 2005, by the entry of the Consent Order. Docket No. 49 in Case No 04-35620. The Debtors' consolidated bankruptcy case was converted to Chapter 7 of the Bankruptcy Code on

March 20, 2006. Docket No. 249. The Trustee was subsequently appointed the Chapter 7 trustee and continues to serve in that position.

On September 18, 2006, the Trustee filed the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road, Laytonsville, MD (the "Removal Motion"). Docket No. 402. The Trustee sought a court order requiring the Debtors to vacate the Property by a date certain and a writ of assistance from the United States Marshall in the event the Debtors did not do so. On October 5, 2006, the Debtors filed an opposition to the Removal Motion. Docket No. 418. The Court held a hearing on the Removal Motion on December 1, 2006.

At the hearing, Mr. Byrd, an attorney who is representing himself and his wife in this case, cross-examined the Trustee but did not testify or submit any evidence or exhibits. At the conclusion of the hearing, the Court announced that it would issue a written decision, but informed Mr. Byrd that it was going to grant the Removal Motion and that the Debtors would be required to vacate the Property by January 31, 2007. As a result, on December 1, 2006, the Debtors were given 61-days notice of the need to vacate the Property.

On December 11, 2006, the Court issued the Memorandum of Decision, Docket No. 480, granting the Removal Motion and entered an order of removal. In the Memorandum of Decision, the Court found and concluded, among other things, that:

> (1) The Trustee is required to market and sell the Property pursuant to 11 U.S.C.

§704(a)(1).

(2) The Debtors had been advised in April 2006, and a number of times since then, that they would be required to vacate the Property, and during that time were implored on several occasion by the Trustee to move from the Property, including moving Mr. Byrd's law practice. Taking into account the additional 61 days given to the Debtors at the December 1st hearing, the Debtors would have 10 months from the time the case was converted to chapter 7 to turnover the Property to the Trustee, which was a substantial and adequate amount of time to relocate.

(3) The Property is in deplorable and deteriorating condition and the estate is being harmed by delay.

(4) The Debtors failed to submit any probative evidence on the harm to the Debtors from requiring them to vacate the Property, other than to simply state that moving would negatively affect Mr. Byrd's law practice.

(5) The Debtors failed to submit any probative evidence on what resources the Debtors had available to them to relocate, which failure was illuminating considering that the Debtors continued to contend that they can comply with their previously-proposed Chapter 13 plan that requires them to make monthly payments in excess of $6,000.00

The Debtors never appealed the Memorandum of Decision or the order approving the Removal Motion.

On March 23, 2007 the Trustee filed the Motion for Order Authorizing Trustee to Enter into Sales Agreement and Approving Sale of Certain Real Property Free and Clear of All Liens, Claims, Interests and Encumbrances (the "Sale Motion"). Docket No. 527. In the Sale Motion, the Trustee sought approval of a contract to sell the Property to prospective purchasers, Richard and Jenine Clonch (the "Clonchs") for $735,000. The Debtors filed an opposition to the Sale Motion on April 12, 2007. Docket No. 537. A hearing on the Sale Motion was held on April 23, 2007.

Prior to the hearing, another party, Fidos for Freedom, came forward and expressed an interest in purchasing the Property. Consequently, the Trustee conducted an auction to allow for competitive bidding on the Property. Upon completion of the auction, the hearing on the Sale Motion commenced and the Trustee informed the Court that the Clonchs were the winners of the auction with a bid of $805,000.

Notwithstanding the new sales price, the Debtors continued to object to the sale. The Trustee testified that, in his business judgment, the proposed sale was in the best interest of the estate. Among other reasons, the Trustee testified that (1) by not listing the Property, the estate did not have to pay a six percent brokers fee;[2] (2) the Property was being sold "as is," without any warranties; (3) the estate held no funds which could be used to fix up the Property, which the Court had previously found was in deplorable and deteriorating condition; (4) the first and second deed of

trust loans against the Property continued to accrue interest, thereby eroding the equity in the Property available to the estate; and (5) after entering into the initial sale contract with the Clonchs, they provided him with a copy of their appraisal of the Property, which reflected a fair market value of less than the sale price, and which reinforced the Trustee's view that the sale was in the best interests of the estate.

At the conclusion of the hearing, the Court approved the sale over all of the Debtors' objections. The Court found that the Trustee had properly exercised his business judgment in approving the sale, the sale of the Property as proposed was fair and reasonable and was being proposed for a sound purpose and in good faith. The Court entered the order approving the sale on April 25, 2007 (the "Sale Order"). The Sale Order is on appeal.

B. FINDINGS OF FACT RELATED TO THE MOTION

On April 23, 2007, on the same day as the hearing on the Sale Motion but without disclosing it to the Court or apparently the Trustee, the Respondents filed a Complaint for Abuse of Process and Civil Conspiracy and Constructive Trust for 4901 Sundown Road, Laytonsville, MD and Demand for Jury Trial (the "Complaint") in the Circuit Court for Montgomery County.

Along with the Debtors' opposition to the Motion, the Debtors filed as an exhibit a document entitled Amended Complaint for Abuse of Process and Civil Conspiracy and Constructive Trust for 4901 Sundown

Road, Laytonsville, MD and Demand for Jury Trial (the "Amended Complaint"). The Amended Complaint is not signed and it is not clear if the Amended Complaint has been filed in the state court action. The Amended Complaint adds several allegations to the Complaint which will be discussed herein as appropriate.[3]

In both the Complaint and the Amended Complaint, the Respondents name, among other defendants, the Trustee, the First Chapter 7 Trustee, and Shulman, Rogers, Gandal, Pordy & Ecker, P.A., which serves as counsel to the Trustee and served as counsel to the First Chapter 7 Trustee (collectively, the "Bankruptcy Defendants"). Both the Complaint and the Amended Complaint assert three counts for relief.

In count one, the Respondents seek compensatory and punitive damages from the defendants, including the Bankruptcy Defendants, for abuse of process. In particular, the Debtors aver that "...the defendants [including the Bankruptcy Defendants] misused the legal process for an improper purpose, namely as a device to disrupt and cripple Ralph Byrd's law practice in an effort to destroy Ralph Byrd's ability to represent clients in credit card collection cases...and to subject Ralph Byrd's law practice to catastrophic disruption just prior to oral argument in the Court of Appeals." See Complaint at ¶ 51; Amended Complaint, at ¶ 57.

In count two, the Respondents seek compensatory and punitive damages for civil conspiracy. Specifically, the Respondents posit that "The Defendants [including the Bankruptcy Defendants] acted in concert and with the common purpose of disrupting and crippling Ralph Byrd's law practice in an effort to destroy Ralph Byrd's

ability to represent clients in credit card collection cases...and subject Ralph Byrd's law practice to catastrophic disruption just prior to oral arguments in the Court of Appeals." Complaint at ¶ 53; Amended Complaint at ¶ 59.

In count three, the Respondents seek to impose a constructive trust against the Property as an equitable remedy. The Respondents aver that the Trustee "...is presently preparing to sell it [the Property] below market value, without advertising the property, in an effort to quickly consummate and make permanent the disruption and crippling of Ralph Byrd's law practice in an effort to destroy Ralph Byrd's ability to represent clients in credit card collection cases...." Complaint at ¶ 55; Amended Complaint at ¶ 61.

In addition, the Respondents seek an order requiring the Trustee "to convey all of his right, title and interest in the property at 4901 Sundown Road, Laytonsville, Maryland 20882 to Plaintiffs Ralph and Beverly Byrd free from all liens, mortgages and other encumbrances...." Complaint at p. 13; Amended Complaint at p. 14.

The Amended Complaint seeks compensatory damages of $1 million and punitive damages of $10 million. Id.

On May 7, the Trustee filed the instant Motion. In the Motion the Trustee seeks a declaration that the Respondents have violated the automatic stay by seeking to impose a constructive trust on the Property. In addition, the Trustee contends that the Respondents violated the Barton Doctrine and seeks to enjoin the Respondents from filing and/or maintaining lawsuits

and appeals in state and federal courts regarding the liquidation or administration of the bankruptcy estate without leave of the Court.

In the Debtors opposition to the Motion, they dispute that they have violated the automatic stay or the Barton Doctrine. They also contend, for the first time in this case, that their claim for a constructive trust against the Property survives this Court's prior order authorizing the sale of the Property free and clear of all liens, claims, interests and encumbrances.[4]

II. CONCLUSIONS OF LAW

A. THE COMPLAINT VIOLATES THE AUTOMATIC STAY TO THE EXTENT IT ASSERTS A CONSTRUCTIVE TRUST OVER THE PROPERTY.

The Trustee contends that the Complaint violates the automatic stay to the extent it seeks to obtain or assert a constructive trust over the Property. This Court agrees.

Commencement of a bankruptcy case creates an estate that is comprised of all of the debtor's legal and equitable interest in property. See 11 U.S.C. § 541(a)(1). The district court, or the bankruptcy court to which the bankruptcy case is referred, has exclusive jurisdiction over all property of the estate wherever located. 28 U.S.C. §1334(e). Property of a bankruptcy estate receives significant levels of protection from the post-petition reach of creditors and third parties through the automatic stay provisions of the Bankruptcy Code. With some exceptions, the filing of a petition under the

bankruptcy code

> (a)...operates as a stay, applicable to all entities, of—
>
> ***
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate...

11 U.S.C. § 362(a)(3). "The purpose of the automatic stay is to preserve what remains of the debtor's insolvent estate and to provide a systematic equitable liquidation procedure for all creditors, secured as well as unsecured, thereby preventing a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts." United States v. Gold (In re Avis), 178 F.3d 718, 721 (4th Cir. 1999)(quoting In re Holtkamp, 669 F.2d 505, 508 (7th Cir. 1982))

The filing of a complaint seeking a constructive trust against property of the estate is a violation of the automatic stay. See, Amedisys, Inc. v. Nat'l Century Fin. Enters. (In re Nat'l Century Fin. Enters.), 423 F.3d 567 (6th Cir. 2005). In Amedisys, a creditor initiated a lawsuit in state court naming a non-debtor bank as the defendant. In that suit, the creditor sought, among other things, the imposition of a constructive trust over property of the estate, namely, accounts receivable that were being held by the bank. On the motion brought by the debtor, the bankruptcy court found that the action violated the automatic stay of Section 362(a)(3). As a result, the bankruptcy court found that the action was void and enjoined the creditor

from further prosecuting that action. The district court affirmed the bankruptcy court's ruling and the creditor appealed.

On appeal, the creditor argued that the bankruptcy court exceeded its jurisdiction because the state court action was not related to the bankruptcy case under 11 U.S.C. § 1334(b). Further, the creditor argued that the bankruptcy court improperly enjoined it from pursuing the state court action under Section 105(a) of the Bankruptcy Code because it made no findings warranting an injunction and the debtor did not bring an adversary proceeding seeking that injunction.

The Court of Appeals for the Sixth Circuit affirmed the bankruptcy court and district court's rulings. Initially, the court found that a bankruptcy court has jurisdiction to enforce the automatic stay and that such a motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). In addition, the court found that the action brought by the creditor violated the automatic stay of Section 362(a)(3) because the creditor sought to exercise dominion over property of the estate. The court further found that a bankruptcy court may enjoin a party from prosecuting an action that violates the automatic stay as part of its powers to enforce the stay without relying on Section 105(a) to impose an injunction.

In the instant case, the Respondents seek a constructive trust over the Property in the Complaint. In particular, they seek an order requiring

> Defendant Gregory P. Johnson, as constructive trustee, to convey all of his right, title, and

> interest in the property at 4901 Sundown Road, Laytonsville, MD 20882 to Plaintiffs Ralph and Beverly Byrd free from all liens, mortgages and other encumbrances and upon such terms as the Court considers appropriate.

Complaint at p. 13. The Court has no difficulty in determining that the Respondents violated the automatic stay of Section 362(a)(3) by filing the Complaint to the extent it asserts a constructive trust over the Property. Just like in Amedisys, the Respondents are seeking to impose a constructive trust over property that is unquestionably property of the estate. Such an action is clearly a violation of the automatic stay because the Respondents are using the Complaint to "assert dominion over" property of the estate. Amedisys, 423 F.3d at 575. Accordingly, the Court finds and concludes that the Respondents violated the automatic stay of 11 U.S.C. § 362(a)(3) by filing the Complaint asserting a claim for constructive trust against the Property.

Further, the record reflects that the Respondents filed a lis pendens publicizing their claim of constructive trust against the Property. There is some question as to whether the filing of a lis pendens notifying potential purchasers of a valid and proper claim against property of the estate is itself a violation of the automatic stay. See In re Knightsbridge Dev. Co., Inc., 884 F.2d 145 (4th Cir. 1989). The Court need not address this issue, however. In this case, the Court has found and concluded that the Respondents violated the automatic stay by filing a Complaint seeking a constructive trust over the Property. As such, whether or not the filing of the lis pendens alone would be a violation of the

automatic stay, the filing of the lis pendens served to publicize the violation, thus exacerbating the effect of the violation of the stay. Accordingly, under the authority of 11 U.S.C. §§105[5] and 362, the Court will enter an order declaring the lis pendens void and of no effect in order to supplement the relief awarded for the violation of the automatic stay resulting from the filing of the Complaint.

Therefore, the Court finds and concludes that the Complaint violates the automatic stay to the extent the Respondents seek to impose a constructive trust over the Property. The Court will enter an order declaring that the Complaint is void to the extent it seeks to impose a constructive trust against the Property. Further, based on the violation of the automatic stay as described above, the Court will enjoin the Respondents from continuing to prosecute the Complaint or filing or prosecuting the Amended Complaint with respect to their claim of constructive trust against the Property. The Court will also enjoin the Respondents from taking any other action to assert dominion or control over the Property or to hinder or delay the sale of the Property as authorized by this Court. The order will declare the lis pendens void and of no effect. Finally, the Court will set a hearing on the Trustee's claim for sanctions for violating the automatic stay.

B. THE RESPONDENTS VIOLATED THE BARTON DOCTRINE BY FILING THE COMPLAINT WITHOUT LEAVE OF COURT.

The Trustee contends that Respondents violated the Barton Doctrine by filing the Complaint against the Bankruptcy Defendants without first seeking leave of

this Court. This Court agrees.

In Barton v. Barbour, the Supreme Court established a long-standing rule that before suit can be brought against a receiver, leave of the court that appointed the receiver must be obtained. See Muratore v. Darr, 375 F.3d 140, 143 (1st Cir. 2004)(citing Barton v. Barbour, 104 U.S. 126, 127 (1881)). This general principle has become known as the "Barton Doctrine." "[C]ircuit courts have extended the Barton Doctrine to lawsuits against a bankruptcy trustee." Darr, 375 F.3d at 143 (quoting Carter v. Rodgers, 220 F.3d 1249, 1252 (11th Cir. 2000); In re Linton, 136 F.3d 544, 545 (7th Cir. 1998); Lebovits v. Scheffel (In re Lehal Realty Assocs.), 101 F.3d 272, (2d Cir. 1996) Allard v. Weitzman (In re DeLorean Motor Co.), 991 F.2d 1236, 1240 (6th Cir. 1993) ("It is well settled that leave of the appointing forum must be obtained by any party wishing to institute an action in a non-appointing forum against a trustee, for acts done in the trustee's official capacity and within the trustee's authority as an officer of the court.").[6]

Indeed, "an unbroken line of cases" has imposed, as a matter of federal common law, the requirement that leave must be obtained from the bankruptcy court before suit can be brought against the bankruptcy trustee. Linton, 136 F.3d at 545. The Barton Doctrine applies to suits brought against trustees in federal or state court.

The Barton Doctrine serves several important policy concerns. In Linton, the United States Court of Appeals for the Seventh Circuit aptly articulated the importance of the Barton Doctrine to bankruptcy

proceedings.

> At stake in the present case...is concern with the integrity of the bankruptcy jurisdiction. If debtors, creditors, defendants in adversary proceedings, and other parties to a bankruptcy proceeding could sue the trustee in state court for damages arising out of the conduct of the proceeding, that court would have the practical power to turn bankruptcy losers into bankruptcy winners, and vice versa. A creditor who had gotten nothing in the bankruptcy proceeding might sue the trustee for negligence in failing to maximize the assets available to creditors, or to the particular creditor. A debtor who had failed to obtain a discharge might through a suit against the trustee obtain the funds necessary to pay the debt that had not been discharged.

Id. Similarly, as cited approvingly by the United States Court of Appeals for the Second Circuit:

> The Bankruptcy Court has overseen all aspects of the case and the entire record here was developed under the court's supervision. . . . The Bankruptcy Court is uniquely situated to determine any issue regarding the appropriateness or good faith of the trustee's action. Because the trustee is an officer of the Bankruptcy Court, the Bankruptcy Court and this Court has an overriding interest in his administration of the estate. We have an institutional interest in holding our trustees fully responsible for breaches of their fiduciary duty, including the duty to exercise due care.

Scheffel, 101 F.3d at 277. At the same time, the courts "have an equally vital institutional interest in protecting our trustees from being mulcted into another court on frivolous or trumped up charges." Id.

The Barton Doctrine protects not only the trustee, but also other court-appointed officers who represent the bankruptcy estate, including the attorney of the trustee. Weitzman, 991 F.2d at 1241. Counsel for trustees and court appointed officers who represent the estate, are "the functional equivalent of a trustee" where they act at the direction of the trustee and for the purpose of administering the estate or protecting its assets. Id.

In this case, the Court finds and concludes that the Barton Doctrine applies to the claims asserted in the Complaint against the Bankruptcy Defendants. The essence of the Complaint is that the Bankruptcy Defendants conspired with other defendants to deprive Ralph Byrd of his ability to practice law. The Complaint alleges counts based on abuse of process and conspiracy, and asserts a count for constructive trust based on the alleged abuse of process and conspiracy claims.

The Complaint contains allegations of fact based on the actions of the Bankruptcy Defendants primarily in paragraphs 28, 31, 32, 33, 34, 40, 41, 43, 45 and 46. Paragraph 46 does not allege particular actions taken by the Bankruptcy Defendants, but asserts that the parties acted in bad faith and with improper intent. All of the remaining above-listed paragraphs assert particular actions taken by the Bankruptcy Defendants. Stripped of their rhetoric, each of these paragraphs

asserts or describes actions that were taken by the Bankruptcy Defendants in the bankruptcy case and/or in the course of administering the bankruptcy estate. As such, the claims fall squarely within the Barton Doctrine in that they assert causes of action based on actions taken by bankruptcy professionals in the course of administering the estate.

Further, even if the Court were to consider the additional allegations contained in the Amended Complaint, see supra at p. 8-9, those allegations do not relieve the Amended Complaint from the application of the Barton Doctrine. As it relates to the Bankruptcy Defendants, the Amended Complaint adds new paragraphs 35 and 37, neither of which assert any different factual allegations and both of which allege essentially that the Bankruptcy Defendants acted with improper intent and in bad faith.

The Court disagrees with the Debtors that the Barton Doctrine does not apply because they have brought these claims as conspiracy and abuse of process claims. Courts have not hesitated to apply the Barton Doctrine to such claims where the claims are based on actions taken by the bankruptcy professionals in the course of administering the bankruptcy estate. For example, in the Darr case, the plaintiff filed an action against the bankruptcy trustee asserting claims remarkably similar to those raised by the Respondents in the Complaint and Amended Complaint. There, the plaintiff claimed that the trustee

> committed abuse of process by committing waste so egregious that his advisors and/or employees used Chapter 11 protection procedures to put

> [plaintiff] out of business rather than assist in reorganizing [plaintiff's] business. [Plaintiff] further alleged that 'such use of [the trustee's] powers constitutes use of judicial appointment and proceedings in bankruptcy for an ulterior purpose, to wit, to make it impossible for [plaintiff] to conduct business and to earn a living from his business.'

Darr, 373 F.3d at 142-143 (emphasis added). The Court found that the Barton Doctrine applied to the plaintiff's claims and dismissed the complaint. See also Weitzman, 991 F.2d at 1239, 1241 (dismissing claims against the trustee's counsel for abuse of process and malicious prosecution as a violation of the Barton Doctrine.)[7] Similarly, this Court concludes that the Barton Doctrine applies to the claims against the Bankruptcy Defendants in the Complaint and the Amended Complaint, because the Bankruptcy Defendants' actions upon which the Respondents claims are based were taken in furtherance of the administration of the estate.

Finally, the Court notes that the only question before it is whether the Barton Doctrine applies to the claims against the Bankruptcy Defendants. For the reasons stated above, the Court finds and concludes that the doctrine applies. If and when the Respondents comply with the Barton Doctrine and seek the appropriate leave of Court, all parties will have an opportunity to address whether such leave should be granted.

The Court further notes, however, that it appears that many, if not all, of the Bankruptcy Defendants' actions described the complaints were either (1) approved by

the bankruptcy court or, in the case of the appeal described in paragraph 28, granted by the United States Court of Appeals for the Fourth Circuit; or (2) taken subject to bankruptcy court order or rule. Moreover, on two prior occasions, the Debtors have filed motions to remove the Trustee based on, among other reasons, their claim that the Trustee acted in bad faith and with improper intent, engaged in unlawful conduct, lacked disinterestedness, and was incompetent. See Docket No. 281 in Case No. 01-25006 and Docket No. 287 in Case No. 04-35620. On both occasions, the Debtors were given a full opportunity to present their claims. On each occasion the Court denied the motion. See Docket No. 305 in Case No. 01-25006 and Docket No. 315 in Case No. 04-35620.

Neither of these orders has been appealed.

Moreover, in the Removal Motion, the Debtors specifically contended that being forced to move from the Property would destroy Ralph Byrd's law practice. They contended that they were being given an inadequate amount of time to move their personality from the Property and for Ralph Byrd to move his law practice. Again, the Debtors were given every opportunity to prove their claim. At the hearing, however, the Debtors presented no probative evidence on these issues; instead Mr. Byrd merely argued these points from the podium. At the hearing, the Trustee's evidence established that the Trustee had given the Debtors numerous notices during the previous eight months that he would seek to have them vacate the Property, and on a number of occasions during that period, implored them that they should commence moving Mr. Byrd's law practice. Memorandum of

Decision, at p. 8-9. The Court gave the Debtors sixty additional days to move from the Property, and ruled that, considering the prior eight months notice that they had received from the Trustee, ten months was more than ample time to vacate the Property and move Mr. Byrd's law practice. Id. at 16. The Debtors did not appeal the Memorandum of Decision or accompanying order requiring them to vacate the Property.

The claims against the Bankruptcy Defendants in the Complaint and Amended Complaint appear to be very similar to the foregoing claims. The Court need not determine here whether the claims in the Complaint or Amended Complaint are barred for various reasons as a result of the extensive litigation in this case or the fact that many of the Trustee's actions were expressly approved by this Court or taken subject to Court order. For purposes of this ruling, the Court holds only that the Barton Doctrine applies to the claims against the Bankruptcy Defendants. If leave is requested to bring the claims by appropriate motion, the Court will address these matters. Without reaching a decision on the merits of such a motion, however, the Court notes that while one of the "vital institutional interests" served by the Barton Doctrine is "holding our trustees fully responsible" for their actions, an "equally vital" interest is "protecting our trustees from being mulcted into another court on frivolous or trumped up charges." Scheffel, 101 F.3d at 277.

The Court having determined that the Respondents have violated the Barton Doctrine, the question remains what remedy should be granted. Where an action is brought in district court in violation of the Barton Doctrine, the court in which the action was

brought must dismiss it for lack of subject matter jurisdiction. Carter, 220 F.3d at 1255; Darr, 375 F.3d at 148. A court may enjoin a party from prosecuting in another forum an action that violates the Barton Doctrine. Scheffel, 101 F.3d at 277-278 (affirming an order enjoining a party from prosecuting an action in state court against the bankruptcy trustee because the action violated the Barton Doctrine.). In addition, a court may award damages to the trustee if it finds that a litigant violated the Barton Doctrine. Weitzman, 991 F.2d at 1241.

The Court will enter an order enjoining the Respondents from prosecuting the Complaint or the Amended Complaint against the Bankruptcy Defendants. Moreover, the Court will set a hearing on the Trustee's claim for sanctions for violating the Barton Doctrine. The hearing will be combined with the hearing on sanctions for the violation of the automatic stay, as determined in Section II. A. of this memorandum opinion.

C. SECTION 363 PROVIDES THE RESPONDENTS WITH NO RELIEF.

In their opposition, the Debtors contend, for the first time, that their claim against the Property for constructive trust survives this Court's order authorizing the sale of the Property free and clear of all liens, claims and interests because Section 363(f) "expressly permits such a sale free and clear only if applicable non-bankruptcy law so permits." Opposition at p.1. They contend, therefore, that the sale is subject to the outcome of their state court action. Id. This new argument fails on both procedural and substantive

grounds.

In the Sale Motion filed on March 23, 2007, the Trustee sought Court approval to sell the Property pursuant to 11 U.S.C § 363(b)(1) and (f) free and clear of all liens, claims, interests and encumbrance. Docket No. 527. The Debtors filed an objection to the sale (Docket No. 537) and actively prosecuted their objection at the sale hearing. The Court overruled their objection and, in the Sale Order, authorized the sale of the Property "free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C § 363(f)." Docket No. 544 at p. 2.

As stated above, the Debtors contend for the first time in their Opposition to the Motion that their claim against the Property for constructive trust survives the Sale Order authorizing the sale of the Property free and clear of all liens, claims interests and encumbrances. In neither their objection to the sale nor at the sale hearing did the Debtors contend either that they had a constructive trust claim against the Property – or any other claim for that matter - or that such claim would survive the Sale Order under Section 363(f). They certainly had ample notice of the Sale Motion, filed an objection to the Sale Motion, actively participated at the sale hearing, and, to state the obvious, were well aware at that time that they purportedly had a claim against the Property, as evidenced by the fact that they filed the Complaint on the same day as the sale hearing was held. Under these circumstances, the Debtors have waived their contention that their claim for a constructive trust against the Property survives the Sale Order. See First Union CommerCorp.v. Nelson, Mullins, Riley, & Scarborough (In re Varat Enters.), 81

F.3d 1310, 1317 (4th Cir. 1996) (finding that a party in interest's failure to object to a claim made on a debtor's assets prior to confirmation of the debtor's reorganization plan may operate as a waiver, barring the party from asserting the objection later.)

Accordingly, the Debtors' assertion that their alleged claim for constructive trust against the Property will survive a sale of the Property, despite the clear language in the Sale Order that the sale is free and clear of all liens, claims, interests and encumbrances, is an improper collateral attack on the Sale Order.

Further, even if the Debtors had timely raised their contention under Section 363(f), it would have been summarily rejected. Section 363(f) provides:

> (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
>
> (1) applicable nonbankruptcy law permits sale of such property and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money

satisfaction of interest.

11 U.S.C. § 363(f). The Debtors contend that, for reasons that are not especially clear, Maryland state law would not permit the sale of the Property free and clear of their constructive trust claim. In particular, they contend:

> Maryland state law provides a cause of action for abuse of process. A claim for abuse of process does not require a showing that the plaintiff prevailed in the underlying case and does not seek to challenge the outcome of the underlying case. Rather, it only requires what appears in the subject state court complaint, i.e., a showing that the underlying case was perverted to accomplish a purpose for which it was not intended.

Opposition at p.1. The Debtors cite no authority for their contention that, under Maryland law, real property cannot be sold free and clear of an inchoate claim for the imposition of a constructive trust as a remedy for alleged wrong-doing. But the Court need not dwell on this deficiency for long. The subsections of Section 363(f) are written in the disjunctive. See In re Elliot, 94 B.R. 343, 345 (Bankr. E.D. PA 1988). The Debtors ignore the plain language of Section 363(f)(4), which allows the sale to be free and clear of an interest if the interest is in bona fide dispute.

In this case, it cannot seriously be contested that the Respondents' constructive trust claim is not subject to bona fide dispute. Accordingly, even if the Debtors had timely raised their Section 363(f) argument – which they did not – their argument would have failed

because their constructive trust claim is subject to a bona fide dispute.

For the foregoing reasons the Court finds and concludes that the Debtors' newfound assertion that their alleged claim for constructive trust against the Property survives a sale of the Property, despite the clear language in the Sale Order that the sale is free and clear of all liens, claims, interests and encumbrances, is an improper collateral attack on the Sale Order. The Court finds and concludes that this issue was waived by the Debtors when they failed to raise it at the sale hearing despite ample opportunity to do so. The Court further concludes that this assertion fails as a matter of law on the merits because their claim for a constructive trust is subject to a bona fide dispute.

Accordingly, the Court will enter an order expressly providing that the sale of the Property will be free and clear of any and all claims by the Respondents for constructive trust or otherwise. In addition, because this Court has exclusive jurisdiction over the Property pursuant to 28 U.S.C §1334(e), any claims by the Respondents against the Property, or any disputes regarding the scope or applicability of the Sale Order, shall be subject to the jurisdiction of this Court to the full extent allowed by 11 U.S.C. § 1334(a) or (b).

III. CONCLUSION

For the reasons stated above, the Court will enter an order granting the Motion in part and awarding relief consistent with this memorandum.

Footnotes

1 As discussed further herein, the Barton Doctrine holds that a bankruptcy trustee cannot be sued for claims arising from his administration of the estate without the plaintiff first seeking leave of the bankruptcy court.

2 The Trustee had previously employed, with Court approval, a real estate agent to assist him in determining an appropriate sale price, a marketing strategy and the like. The Trustee is obligated to pay the real estate agent $5,000 for these services even though the Property was not listed. The Trustee has concluded this arrangement is in the best interest of the estate because the Trustee would have had to pay the agent $48,300 ($805,000 x 0.06) if the Property had been listed. The Trustee concluded that, because there was sufficient interest in the Property, listing it in the face of a bona fide contract would have generated a broker's commission without the attendant benefit to the estate.

3 As set forth herein, having reviewed both the Complaint and Amended Complaint in detail, the Court's conclusion that the Respondents violated the automatic stay and the Barton Doctrine would be no different whether or not they have filed the Amended Complaint.

4 Ralph Byrd is an attorney and signed the Complaint on behalf of all of the plaintiffs. In the Debtors' opposition to the Motion, Mr. Byrd states that he is only representing himself and Mrs. Byrd in this bankruptcy case, and not the remaining Respondents, Stanton P. Byrd, Ralph Trevor Byrd and Mark S. Byrd,

who have previously been identified to this Court as the Debtors' adult sons. Because Stanton P. Byrd, Ralph Trevor Byrd and Mark S. Byrd were parties to the filed Complaint and therefore were parties to the violations of the automatic stay and the Barton Doctrine, the Court will include them in the prospective relief granted herein. Whether they have received notice of these proceedings or the order entered by this Court pursuant to this ruling will be addressed in further proceedings as necessary.

5 11 U.S.C. § 105(a) provides in pertinent part that "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

6 Although the Fourth Circuit Court of Appeals has not adopted the Barton Doctrine in a published opinion, it did so in an unpublished opinion. See Gordon v. Nick, 1998 U.S. App. LEXIS 21519, 5-6 (4th Cir. 1998) (unpublished)

7In a number of cases, the issue focuses on whether a well-known exception to the Barton Doctrine applies as a result of 28 U.S.C. § 959(a) where the trustee is sued for actions taken in conducting the business of the debtor. That section, 28 U.S.C. § 959(a), has no application to this case.

Signed: December 27, 2006
SO ORDERED
Entered: December 28, 2006

Chapter 7 (Consolidated with No. 01-25006)
Case No. 04-35620-TJC
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors

ORDER DENYING MOTION TO RECONSIDER GRANTING THE MOTION OF CHAPTER 7 TRUSTEE TO AUTHORIZE THE REMOVAL OF PERSONS AND PROPERTY FROM 4901 SUNDOWN ROAD LAYTONSVILLE MD AND ISSUING WRIT OF ASSISTANCE

Before the Court is the Motion to Reconsider Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road Laytonsville MD and Issuing Writ of Assistance (the "Motion to Reconsider") (the "Removal Order") filed on December 21, 2006, by Ralph and Beverly Byrd (the "Debtors" or, individually, "Mr. Byrd" or "Mrs. Byrd"). Docket No. 494. In the Motion to Reconsider, the Debtors request that the Court reconsider the Order Granting the Motion of Chapter 7 Trustee to Authorize the Removal of Persons and Property from 4901 Sundown Road Laytonsville MD and Issuing Writ of Assistance (the "Removal Order"), which requires them to vacate their residence at 4901 Sundown Road, Laytonsville, Maryland (the "Property") by January 31, 2007. Oral argument is deemed unnecessary because

the facts and legal arguments are adequately presented in the Debtors' brief and the exhibits submitted in support. See Local Rule 9013-1(b)(4). For the reasons stated hereafter, the Motion to Reconsider will be denied.

The Removal Order granted the motion by Gregory Johnson, the Chapter 7 Trustee (the "Trustee") to authorize the removal of the Debtors from the Property and the issuance of a writ of assistance to the United States Marshall to assist the Trustee in that process (the "Removal Motion"). Docket No. 402. On December 1, 2006, the Court held a hearing on the Removal Motion, at which the Trustee testified at length. Mr. Byrd, an attorney who is representing he and his wife in this case, cross-examined the Trustee but did not testify or submit any evidence or exhibits. At the conclusion of the hearing, the Court announced that it was going to issue a written decision, but informed Mr. Byrd that it was going to grant the Removal Motion and that the Debtors would be required to vacate the Property by January 31, 2007. As a result, on December 1, 2006, the Debtors were given 61-days notice of the need to vacate the Property. On December 11, 2006, the Court issued a Memorandum of Decision, Docket No. 480, granting the Removal Motion, followed by the entry of the Removal Order.

In the Memorandum of Decision, the Court found and concluded, among other
things, that:

> (1) The Trustee is required to market and sell the Property pursuant to 11 U.S.C. §704(a)(1).

(2) The Debtors had been advised in April 2006, and a number of times since then, that they would be required to vacate the Property, and during that time were implored on several occasion by the Trustee to move from the Property, including moving Mr. Byrd's law practice. Taking into account the additional 61 days given to the Debtors at the December 1st hearing, the Debtors will have had 10 months from the time the case was converted to chapter 7 to turnover the Property to the Trustee, a substantial and adequate amount of time to relocate.

(3) The Property is in deplorable and deteriorating condition and the estate is being harmed by delay.

(4) The Debtors failed to submit any probative evidence on the harm to the Debtors from requiring them to vacate the Property, other than to simply state that moving would negatively affect Mr. Byrd's law practice.

(5) The Debtors failed to submit any probative evidence on what resources the Debtors had available to them to relocate, which failure was illuminating considering that the Debtors continue to contend that they can comply with their previously-proposed Chapter 13 plan that requires them to make monthly payments in excess of $6,000.00

(6) Based on the evidence at the hearing, the Debtors would receive no distribution in this case.

In the Motion to Reconsider, the Debtors do not challenge any of the above findings. Instead, the

Debtors state that the Maryland Court of Appeals has granted certiorari in the case of Jackson v. Pasadena Receivables, No. 106, September Term 2006 (the "Jackson Appeal"). Mr. Byrd states he is counsel for the appellant in the Jackson Appeal and requests reconsideration of the Removal Order because: (1) requiring his family to vacate the Property by January 31, 2007, will hinder his ability to represent his client in the Jackson Appeal; (2) the Jackson Appeal addresses issues that also provide the basis for the Debtors' objections to the pre-petition credit card claims against them in this bankruptcy case, and, therefore, this Court should await a decision in the Jackson Appeal because it will resolve those objections. The Debtors also claim, for the first time, that the Removal Order violates the due process rights of their two adult sons who, according to the Debtors, own some of the personal property located at the Property.

The Debtors Motion to Reconsider is grounded in Fed. R. Civ. P. 59(e), made applicable in bankruptcy by Fed. R. Bankr. P. 9023. In Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998), the Court of Appeals for the Fourth Circuit articulated three grounds for relief under Fed R. Civ. P. 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Id. Rule 59(e) motions may not be used, however, "to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance." Id. "[R]econsideration of a judgment after its entry is an extraordinary remedy which should be

used sparingly." Id. (quoting, 4 Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 2810.1, at 124 (2d ed. 1995)). The Debtors have failed to meet these standards in the Motion to Reconsider.

1. This estate is administratively insolvent and is substantially harmed by delay.

It now appears certain and beyond dispute that this case is administratively insolvent. At the December 1st hearing, the Trustee addressed the Debtors' contention that they have a pecuniary interest in this bankruptcy case, and testified at length about the economic status of the estate. In the Memorandum of Decision, the Court accepted the Trustee's uncontroverted testimony that he believed the most he could get from the sale of the Property was $700,000. Memorandum of Decision at p. 11, Docket No. 480.

The Debtors did not challenge this amount either at the hearing or in the Motion to Reconsider.[1]

The Court also accepted the Trustee's uncontroverted testimony, supported by docket entries in this case, that as of the time of the issuance of the Memorandum of Decision, the net sale proceeds available from a $700,000 sale of the Property would be approximately $23,350 before taking into account significant additional costs and expenses of estate administration described therein. Id. at pp. 12-13 and n. 5-7. Subsequently, on December 12, 2006, after the Court issued the Memorandum of Decision, the Court approved an interim fee application by the Trustee's counsel for the period from the conversion of this case to Chapter 7 through September 30, 2006. Docket Nos. 483 and 484.

The Court awarded $39,543 in attorneys' fees and $2,469.93 in costs and expenses, for a total of $42,012.93. Id. Because this request was pending, but not approved, at the time the Court issued the Memorandum of Decision, the Court identified these fees and expenses but did not include the amount of $42,012.93 in the calculation that resulted in the $23,350 of net proceeds available. Memorandum of Decision at pp. 12-13 and n. 6, 7, Docket No. 480. Now that the Court has approved these fees and expenses, and taken these fees and expenses into account, it is apparent that the proceeds from the sale of the Property will be insufficient to pay administrative claims in this case.

Moreover, the above calculations do not take into account: (1) the costs to clean the Property, remove the personal property from the inside and outside, and put the Property in marketable condition, which the Trustee estimated will be considerable; (2) the Trustee's counsel's fees for the bankruptcy case in the current Chapter 7 from September 30, 2006, forward or other costs of the current Chapter 7; (3) the administrative costs of the case incurred while it was in the initial Chapter 7, Chapter 11 or Chapter 13 that have not yet been filed or resolved.[2] See also, Memorandum of Decision at pp. 12-13. From the foregoing, it is obvious that there will not be sufficient proceeds from the sale of the Property to pay administrative claims in this case.

This fact is extremely disturbing. As the Court has previously concluded, this case has cost far more to administer than it would otherwise warrant due to the Debtors' continuing litigation. The estate has one asset of significant value – the Property – and a handful of

pre-petition claims. Nevertheless, the total number of docket entries of the current case and its predecessor, Case No. 01-25006, now approach 900, without taking into account the filings on appeal. The Debtors have challenged virtually every action by the Trustee, seldom with success, and have repeatedly filed motions to reconsider, appeals, stay motions and the like. The Trustee has been required to respond to the Debtors' filings, and to file unnecessary motions to require the Debtors, for example, to surrender documents and information and turn over the Property, even though these items are unquestionably property of the estate. It now appears certain that the Trustee and his counsel, and other administrative claimants, will not be fully compensated for their efforts in administering this case, to say nothing of the pre-petition creditors who will not receive any distribution.

Further, in the Memorandum of Decision, the Court found and concluded that the Property is deteriorating in value, thus magnifying the problem and highlighting the need for quick resolution of this case. Memorandum of Decision at pp. 10-11, Docket No. 480. Accordingly, in the interest of minimizing the loss to the administrative claimants in this case, the Trustee must be allowed to efficiently and expeditiously administer this estate. Therefore the Court will deny the Motion to Reconsider.

Moreover, under these circumstances the Court will take the extraordinary measure of advising the Trustee and his counsel that they do not need to file any responses to the Debtors' filings unless they so choose or unless instructed to do so by the Court. Although the Trustee's filings have been helpful in resolving

matters, the Court cannot allow the Trustee to incur administrative claims that likely will not be paid unless essential for the administration of this case. Moreover, many of the Debtors' filings, such as the instant motion, do not require a response to resolve. Accordingly, the Trustee and his counsel are hereby advised that they do not need to file any responses to the Debtors' filings unless they so choose or unless instructed to do so by the Court.

2. The Jackson Appeal does not warrant an extension of the time for the Debtors to vacate the Property.

The Debtors' contend that the Jackson Appeal requires reconsideration of the Removal Order because: (1) requiring his family to vacate the Property by January 31, 2007 will hinder his ability to represent his client in the Jackson Appeal; (2) the Jackson Appeal addresses issues that form the basis of the Debtors' objections to the pre-petition credit card claims in this bankruptcy case. This Court disagrees.

a. Mr. Byrd has had 10 months to move his law practice from his home.

As addressed at length in the Memorandum of Decision, the Trustee has warned, requested and implored the Debtors to move from the Property since the case was converted to Chapter 7 in March 2006. See Memorandum of Decision at pp. 7-10. The Debtors have chosen to ignore those requests and instead have opted to challenge the Trustee's right to remove them. Id. The Debtors thus far have been unsuccessful in those challenges. The Debtors' unsuccessful litigation efforts do not create an emergency. They will have had

ten months to vacate the Property and move Mr. Byrd's law practice. That is more than sufficient and reasonable time to do so, especially in light of the deteriorating condition of the Property.

The Court need not address at length Mr. Byrd's claim that he will be unable to properly represent his client in the Jackson Appeal. While Mr. Byrd's interest in representing his client in the Jackson Appeal is not unimportant, it does not override the loss and prejudice to the estate. Considering that the estate is administratively insolvent, and that the Property's condition is deteriorating, the Court's primary interest is in protecting and administering the estate, not Mr. Byrd's post-petition law practice. The Court – and the Trustee for that matter – has been more than accommodating to the Debtors and has given them more time than the usual Chapter 7 debtor receives to turnover property of the estate.

b. The decision in the Jackson Appeal has no legal relevance to this case. The Debtors contend that the Jackson Appeal addresses issues that will have a bearing on their objections to the credit card claims in this case.[3]

However, as established above, the case is administratively insolvent and pre-petition creditors will not receive any distribution. Consequently, whether or not the Debtors have any valid objections to pre-petition claims is no longer relevant to this case.

The Court also again points out to the Debtors the holding in Willemain v. Kivitz, 764 F.2d 1019 (4th Cir. 1985), finding that an insolvent debtor was not a party

in interest and lacked standing to object to a sale of estate assets because he had no pecuniary interest in the distribution of his assets among his creditors. See also, Memorandum of Decision at pp. 15-16, Docket No. 480. In the Memorandum of Decision, the Court stated that the application of Willemain to this case would await case administration matters as applicable. Because the Debtors raise the issue of claims adjudication in the Motion to Reconsider, the holding of Willemain is pertinent. In accordance with Willemain, the Court will enter an order on Debtors' pending objections to claims (1) that provides that the Debtors lack standing to object to any claims (administrative or pre-petition) in this case; and (2) staying all pre-petition claims adjudication unless and until it is determined that the creditors may receive some amount of distribution.

3. The due process claim was not raised at the hearing and the Debtors lack standing to assert it.

The Debtors contend that the Removal Order violates the due process rights of their adult sons, who have personal property at the Property that must be removed by January 31, 2007. The Debtors did not raise this issue at any time prior to or at the hearing on the Removal Motion. As noted above, Rule 59 motions are not vehicles to raise novel legal issues that the parties could have raised in the first instance but failed to do so. Accordingly, the due process issue is not properly before this Court and will be denied.

Further, even aside from the procedural defect, the due process claim fails for a second reason. With some limited exceptions that are not implicated here, a party

"generally must assert his own [due process] legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Kowalski v. Tesmer, 543 U.S. 125, 129 (2004) (finding that attorneys did not have the right to assert the due process rights of prospective clients). Here the Debtors are attempting to assert the alleged due process rights of their adult sons, who are fully capable of bringing such actions on their own behalf. Consequently, the Debtors lack standing to assert due process rights on behalf of their adult children.

Therefore, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that the Motion to Reconsider (Docket No. 494) is DENIED.

Footnotes

1 Not only did the Debtors not challenge the Trustee's belief of value, but the Trustee's statement of value is consistent with Mrs. Byrd's Schedules A and D filed under penalty of perjury in this case, which state that the value of the property is $700,000 and $600,000, respectively. Docket No. 15, Schedules A and D.

2 Counsel for the Trustee included in the fee application a request for fees and services rendered while the case was in Chapter 13 in the amount of $39,943 for fees and $2,875.74 for expenses. Docket No. 460. That request has been deferred by the Court. Docket No. 484.

3 The Debtors filed objections to every claim filed in the case.

Signed: December 21, 2006
SO ORDERED

As established at the hearings held on December 1, 2006, after the conversion of this case to chapter 7, the documents were first requested by the Trustee by letter dated April 19, 2006, in numerous follow-up letters, at the meeting of creditors on July 21, 2006, and by letter in September 2006. The Debtors chose repeatedly to ignore those requests. At the December 1, 2006 hearing, the Court gave the Debtors until January 30, 2007 to produce the information. The Debtors have had ample opportunity to produce the information and no further extensions will be granted.

Entered: December 22, 2006

Chapter 7 (Consolidated with No. 01-25006)
Case No. 04-35620-TJC
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at GREENBELT

In re: Ralph T. Byrd, Beverly S. Byrd, Debtors

ORDER DENYING MOTION TO RECONSIDER ORDER GRANTING TRUSTEE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION

Upon consideration of the Motion to Reconsider Order Granting Trustee's Motion to Compel Production of Documents and Information Filed by Debtor Beverly Byrd and Debtor Ralph Byrd, it is, by the United

States Bankruptcy Court for the District of Maryland, ORDERED, that the Motion to Reconsider hereby is denied.

Filed 12/21/06 (494)
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Case No. 04-35620 TJC

IN RE
RALPH T. BYRD BEVERLY BYRD Debtors

MOTION TO RECONSIDER GRANTING THE MOTION OF CHAPTER 7 TRUSTEE TO AUTHORIZE THE REMOVAL OF PERSONS AND PROPERTY FROM 4901 SUNDOWN ROAD LAYTONSVILLE MD AND ISSUING WRIT OF ASSISTANCE

Ralph T; Byrd, pro se, and on behalf of Beverly S. Byrd, hereby asks the Court to reconsider its Order Granting The Motion Of Chapter 7 Trustee To Authorize The Removal Of Persons And Property From 4901 Sundown Road, Laytonsville, Md And Issuing Writ Of Assistance and states as follows:

I. Reconsideration Is Warranted Because Forcing The Debtors To Relocate Now Will Prejudice Ralph Byrds' Ability To Represent The Interests Of Maryland Credit Card Users In The Court Of Appeals.

1. In December 11, 2006 the Bankruptcy Court entered an Order Granting The Motion Of Chapter 7 Trustee To Authorize The Removal Of Persons And Property From 4901 Sundown Road, Laytonsville, MD And Issuing Writ Of Assistance.

2. On December 14, 2006, pursuant to Sec. 12-305 of the Courts & Judicial Proceedings Article of Maryland's

Annotated Code, Maryland's Court of Appeals determined that it is desirable and in the public interest to accept certiorari[1] in the case of Sheri Jackson v. Pasadena Receivables No. 106 September Term 2006. See Exhibit 1.

3. That appeal involves many of the same issues presently pending before the Bankruptcy Court in the instant proceeding relative to claims of unsecured creditors
whose claims are grounded in alleged credit card debt.

4. The Court of Appeals' certiorari Order requires Ralph T. Byrd, Esq., counsel for the Appellant in that appeal, to file Appellant's Brief and Record Extract on or before January 12, 2007; to be prepared to file Appellant's Reply Brief no later than February 22, 2007 (pursuant to Md. Rule 8-502); and to be prepared far oral argument no later than March 8, 2007.

5. It will be impossible far Ralph Byrd to comply with this Court's Order Granting The Motion Of Chapter 7 Trustee To Authorize The Removal Of Persons And Property From 4901 Sundown Road, Laytonsville, MD And Issuing Writ Of Assistance during the period that Ralph Byrd has to represent the interests of Maryland's credit card users in Maryland's Court of Appeals. There is insufficient time to comply with said Bankruptcy Court Order while performing a duty to the public in Maryland's highest court. To force the Debtors to comply with this Court's Order Granting The Motion of Chapter 7 Trustee To Authorize The Removal of Persons And Property From 4901 Sundown Road, Laytonsville, MD And Issuing Writ Of Assistance would be unfairand detrimental to the public

interest under the circumstances.

6. On the other hand the Trustee is unable to show any prejudice from extending the time for compliance with said Order, much less sufficient prejudice to outweigh the public interest in having Ralph T. Byrd, Esq. present the best possible representation in Maryland's Court of Appeals. Clearly the Trustee has not made, and can not make, a sufficient showing of prejudice to the interests of private creditors that could justify prejudicing the outcome of a matter of public interest which Maryland's highest court has chosen to review.

II. Reconsideration is Warranted Because Forcing The Debtors To relocate now Will Prejudice THe Debtors' Ability To Obtain A Correct Decision On The Objections To Claims In This Case.

7. Pending before this Court are objections to the credit card claims of several creditors. All the objections include defenses under Sections 12-501 et seq. of the Commercial Law Article of the Annotated Code of Maryland popularly known as the Retail Credit Accounts Law or the "RCAL")

8. On November 8, 2006 the Debtors moved pursuant to Section 12-601 of the Courts & Judicial Proceedings Article of the Annotated Code of Maryland and Md. Rule 8-305 for a Certification to Maryland's Court of Appeals to answer questions of law pending in the Bankruptcy Court.

9. On November 9, 2006 Platinum Financial Services Corporation opposed the motion on the grounds that a pending certiorari petition in another case "would

present the issues that the debtors seek certification for in this matter to the Court."

10. The appeal in heri Jackson v. Pasadena Receivables No. 106 September Term 2006 involves many of the same issues presently pending before the Bankruptcy Court in the instant proceeding relative to claims of unsecured creditors whose claims are grounded in alleged credit card debt. Accordingly, on December 18, 2006 the Debtors filed a Reply To Platinum Financial Services Corporation's Opposition To Motion To Certify Questions of Law To Maryland Court of Appeals. The Debtors" Reply renewed their request to certify all issues in this case relative to the RCAL so that the Court of Appeals could decide them during the same session.

11. The Debtors explained that unless the Bankruptcy Court certifies the issues relative to the Debtors objections to claims in this case to Maryland's Court of Appeals Platinum Financial Services Corporation and the other unsecured credit card creditors in this proceeding will endeavor to distinguish this case from the Seri Jackson case and argue that the Court of Appeals' ruling in Sheri Jackson should not apply here should the decision go against there.

12. The Bankruptcy Court now has the opportunity to completely avoid any ambiguity or unanswered questions relative to the Debtors' defenses under Maryland's Retail Credit Accounts Law by timely certifying the issues in this case to Maryland's Court of Appeals at a time when the Court of Appeals has displayed its willingness to entertain these issues. Therefore the Bankruptcy Court should certify the

issues in this case to Maryland's Court of Appeals to be joined with the issues already pending and to be decided by Maryland's highest court.

14. In any event, it would be clearly improper for the Bankruptcy Court to actively disrupt and prejudice the proceedings in Maryland's highest court by forcing Ralph Byrd, Esq. to relocate his law office during the very period that he has to prepare appellant's briefs and oral argument.

15. It would be unconscionable for the Bankruptcy Court to place its hand on the scales of justice when the very issues to be decided by Maryland's Court of Appeals are also pending in the Bankruptcy Court and bear directly upon the Debtors' pecuniary interests.[2]

16. Principles of comity alone should compel the Bankruptcy Court to abstain from taking any action that will prejudice the judicial process in Maryland's highest court. It would be manifestly unjust for the Bankruptcy Court to deliberately prejudice the judicial process in Maryland's highest court by disrupting Ralph Byrd's ability to represent consumer interests in Maryland's highest court even while the same issues are pending in the Bankruptcy Court in this very case.

III. Reconsideration Is Warranted Because Forcing The Debtors To Relocate Now Will Prejudice Ralph Byrds' Ability To Represent The Interests Of His Clients In Other Maryland Courts.

17. At the hearing on December 1, 2006 Ralph Byrd asked the Bankruptcy Court to consider the effect of an eviction on his ability to conduct his law practice. The

Court replied that it would be no different from any other debtor who had a home based business) The Debtors respectfully ask the Bankruptcy Court to reconsider that statement.

18. Unlike other home based businesses, a law practice that includes litigation not only involves services performed on behalf of individual with private interests, but also services on behalf of, and as an officer of, a court. Therefore forcibly disrupting Ralph Byrd's law practice will affect not only his client's interests but the administration of court proceedings, including compliance with other court orders. This is not to suggest that either the interests of the claimants or the administration of the estate in this bankruptcy proceeding should be subordinate to the interests of Ralph Byrd's clients or the judicial proceedings in state court. However, it does mean that the Bankruptcy Court should, at least, consider the effect of its Removal Order on Ralph Byrd's clients and judicial proceedings in other courts and recognize that a law practice is, in fact, different from any other home based business.[3]

IV. Reconsideration Is Warranted Because The Removal Order Would Violate The Due Process Rights Of The Other Residents.

20. The Trustee testified and presented photographs establishing that other residents (the Debtors' sons) presently reside at the property or have constructive possession of the property along with the Debtors. Yet, without any notice to these individuals, the Bankruptcy Court has issued an Order which permits the Trustee to place these individuals' belongings in dumpsters if the

belongings remain on the property after January 1, 2007 (and, presumably remove these individuals from the property should they remain.)

21. No Maryland law exists whatsoever that permits a party with a superior right to possession of real property to place in dumpsters the belongings of another individual with lesser rights to possession of the real property without notice. Moreover no Maryland law exists that permits an eviction of any individual with a colorable possessory right to real property without notice and an opportunity to be heard.

22. The Debtors attempted to raise the issue of notice, perhaps inartfully, when they argued that the removal request should be the subject of an adversary proceeding. The Court pointed out that under Rule 7001 a proceeding by a trustee to compel a debtor to turn over property of the estate is not considered an adversary proceeding.

23. However, the Court seemed to ignore the fact that others reside at the property or have constructive possession of the property. A proceeding to require the turnover to the trustee of property in the possession of someone other than the debtor is, indeed, the type of proceeding that must be brought as an adversary proceeding even when the property is merely in the constructive possession of another. See In re Gallery 119 B.R. 504, 514 (Bkrtcy W.D. Pa. 1990).

24. In this case, the Bankruptcy Court issued an Order that would deprive individuals of property without any process (due or otherwise) by essentially ordering the Debtors to vacate the property and to take the other

occupants and the other occupants' belongings with them, This is wrong to its core. The Debtors' sons are not chattel.

WHEREFORE, the Debtors request the Court to reconsider its Order Granting The Motion Of Chapter 7 Trustee To Authorize The Removal Of Persons And Property From 4901 Sundown Road, Laytonsville, Md And Issuing Writ Of Assistance, together with such other and further relief as may be just and proper.

Respectfully submitted,

Ralph Byrd , pro se
4901 Sundown Road
Laytonsville, Maryland 20882
(301) 774-3117
Bar No. 25559

Footnotes

1The Petition For Certiorari had been pending since October 0, 2006, Appeal to Maryland's Court of Appeals is not a matter of right and is obtained only upon a finding by the Court of Appeals that review is "desirable and in the public interest." See Cts. & Jud. Proc. Secs. 12-203 and 12-305.

2As Ralph Byrd attempted to remind the Bankruptcy Court on December 1, 2006, this Bankruptcy case began as an involuntary proceeding commenced by Platinum Financial Services Corporation in response to Ralph Byrd's challenges to its claims in state courts. The U.S. Court of Appeals for the Fourth Circuit Court of Appeals In re Byrd 357 F. 3d 433 (2004) permitted the involuntary proceeding to go forward on the grounds

that the involuntary proceeding was not precluded by a "bona fide dispute." Now, ironically, Maryland's highest court has recognized that it is "desirable and in the public interest" to decide the very issues that the Fourth Circuit held to be ""not bona fide" and which gave rise to this entire Bankruptcy case.

3The Bankruptcy Court's Order stated on page 18, n.11, the Court "'does not accept as probative Mr. Byrd's out of court statements that he had the Trustee repeat on cross examination." In fact however, Ralph Byrd had the Trustee repeat Ralph Byrd's out of court statements which the Trustee himself had previously offered into evidence to justify obtaining the Removal Order, i.e., that Ralph Byrd was simply too busy to remove himself voluntarily from the property by January 15, 2007. No objection was made to the Trustee's testimony in this regard and it was admitted into evidence In the absence of an objection it would be error for the Bankruptcy Court simply to disclose now that it chose to disregard such testimony when Ralph Byrd sought to use it to support his own case. See generally U.S. v. Gomez-Norena 908 F. 2d 497 (9th Cir.1990); U.S. v. Walters 904 F. 2d 765 (1st Cir. 1990); Gov't of Virgin Islands v. Archibald 987 F. 2d 180 (3rd. Cir. 1993); U.S. v. Palmer F. 3d 300 (9th Cir.1993). In any event, attached hereto as Exhibit 1 is a printout of most of Ralph Byrd's cases. In addition, Exhibit 2 shows Ralph Byrd has a Fourth Circuit Court of Appeals Brief due on December 7, 2006; Exhibit 3 shows a Court of Special Appeals Reply Brief is due on or about January 22, 2007 with oral argument in the Court of Special Appeals in early February; and Exhibit 4 shows Ralph Byrd has a three day trial in Montgomery County Circuit Court commencing

January 9, 2007 (not to mention the appellate proceedings in Maryland's Court of Appeals explained above.) See also notices of numerous trials and other matters incident thereto attached as Exhibit 5.

Filed 12/18/06
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
Case No. 04-35620 TJC

IN RE
RALPH T. BYRD BEVERLY BYRD Debtors

MOTION TO RECONSIDER ORDER GRANTING TRUSTEE'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION

Ralph T. Byrd, pro se, and on behalf of Beverly S. Byrd respectfully asks the Court to reconsider its Order Granting Trustee' Motion To Compel Production of Documents and Information, and as grounds therefor states as follows:

1. On December 8, 2006 the Bankruptcy Court entered an Order Granting Trustee's Motion to Compel Production of Documents and Information Said Order requires the Debtors to produce certain documentation and information to the Chapter 7 Trustee no later than January3 0, 2007 or face sanctions from the Court.

2. On December 14, 2006, pursuant to See. 12-305 of the Courts & Judicial Proceedings Article of Maryland's Annotated Code, Maryland's Court of Appeals determined that it is desirable and in the public interest to accept certiorarifn1 in the case of Sheri Jackson v. Pasadena Receivables No. 106 September Term 2006. See Exhibit 1.

3. That appeal involves many of the same issues presently pending before the Bankruptcy Court in the

instant proceeding relative to claims of unsecured creditors whose claims are grounded in alleged credit card debt.

4. The Court of Appeals' certiorari Order requires Ralph T. Byrd, Esq., who represents the Appellant Sheri Jackson, in that appeal, to file Appellant's Brief and Record Extract on or before January 12, 2007; to be prepared to file Appellant's Reply Brief no later than February 22, 2007 (pursuant to Md. Rule 8-502); and to be prepared far oral argument no later than March 8, 2007.

5. It will be impossible far Ralph Byrd to comply with this Court's Order Granting Trustee's Motion to Compel Production of Documents and Information during the period that Ralph Byrd has to represent the interests of Maryland's credit card users in Maryland's Court of Appeals. There is insufficient time to produce documents in the Bankruptcy case while performing a duty to the public in the Court of Appeals. To ford the Debtors to comply with this Court's Order Granting Trustee's Motion to Compel Production of Documents and Information under threat of sanctions and subject to the Trustee's determined efforts to show error would be unfair and in conflict with the public interest under the circumstances.

6. On the other hand the Trustee is unable to show any prejudice from extending the time for compliance with the Order Granting Trustee's Motion To Compel Production of Documents and Information, much less sufficient prejudice to outweigh the public interest in having the best possible representation in the Court of Appeals.

7. Accordingly the Debtors respectfully ask the Court to extend the time to comply with the Court's Order Granting Trustee's Motion to Compel Production of Documents and Information until after oral argument in Sheri Jackson v. Pasadena Receivables No. 106 September Term 2006 in Maryland's Court of Appeals.

8. No, additional memorandum of law will accompany this motion. WHEREFORE, the Debtors request the Court to reconsider its Order Granting Trustee's Motion To Compel Production of Documents and Information, together with such other and further relief as may be just and proper.

Respectfully submitted,

Ralph Byrd , pro se
4901 Sundown Road
Laytonsville, Maryland 20882
(301) 774-3117
Bar No. 25559

Footnote

1The Petition For Certiorari had been pending since October 30, 2006. Appeal to Maryland's Court of Appeals is not a matter of right and is obtained only upon a finding by the Court of Appeals that review is "desirable and in the public interest.'" See Cts. & Jud. Proc. Secs.12-203 and 12-305

6/23/2004 (179)
Civil Action No. WMN-02-675
Case No. 01-2-5006-DK (Chapter 7)
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Ralph Byrd

Ralph T. Byrd
v.
Platinum Financial Services Corporation

ORDER

For the reasons stated in the foregoing memorandum, IT IS this 15th day of June, 2004, by the United States District Court for the District of Maryland, ORDERED;

1. That Ralph Byrd's Motion for Reconsideration of Remand Order, Paper No. 32, is DENIED; and

2. That the Clerk of the Court shall mail copies of this Memorandum and order to Appellant and all counsel of record.

William M. Nickerson
Senior United States District Judge

Civil Action No. WMN-02-675
Case No. 01-2-5006-DK (Chapter 7)
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Ralph Byrd

Ralph T. Byrd
v.
Platinum Financial Services Corporation

MEMORANDUM

Before the Court is Ralph Byrd's Motion for Reconsideration of Remand Order, Paper No. 32. The motion is fully briefed, Upon a review of the motion and the applicable case law, the Court determines that no hearing is necessary and that the motion will be denied.

The procedural history of this litigation, briefly summarized, is as follows. Platinum Financial Services Corporation (Platinum) initiated an involuntary bankruptcy proceeding against Debtor Ralph Byrd to enforce several state court judgments it held against Byrd. Byrd challenged Platinum's filing of the involuntary petition on the grounds that: (1) Platinum's state court judgments remained the subject of bona fide disputes; (2) Platinum filed the petition in bad faith, as an improper means of debt collection and to delay the imminent trial of a state court action brought by Platinum against Byrd and for which Byrd asserts Platinum was unprepared; and (3) the Bankruptcy Court should abstain from accepting jurisdiction under 11 U.S.C. Sec. 305. The parties filed cross motions for summary judgment.

After a hearing, Judge Duncan Keir of the Bankruptcy Court found that, under the undisputed facts, Platinum was entitled to judgment as to each of these issues. As to the first issue, the Bankruptcy Court held that where, as here, a claim has been reduced to a state court judgment which is unstayed, the party against whom the judgment is entered is precluded from asserting that there is a bona fide dispute as to the liability embodied in that judgment. Tr. of July 17, 2002 Ruling at 9.[1] As to the second issue, Judge eir found that Platinum's petition was not filed in bad faith, based upon the uncontested fact that Byrd was unable, or at least unwilling, to pay his debts as they became due, coupled with his concern about the potential dissipation of Byrd's assets. On the issue of the potential dissipation of assets, Judge Keir noted that a mortgage foreclosure sale of Byrd's residence had been commenced, and he took judicial notice that a forced sale at auction will often yield less than the fair market value of the property. Id. at 13-14.[2] The Bankruptcy Court also observed that the filing of a bankruptcy petition, whether filed voluntarily or involuntarily, often has an impact on other litigation, and the fact of that impact alone is not a sufficient basis for dismissal. Id. at 14. Judge Keir also intimated that the bankruptcy stay could be lifted to allow some of the state court litigation to go forward, in that venue. Id. at 15. He further observed that, regardless of the strength or weakness of Platinum's evidence in the particular soon-to-be tried state court action, other claims of Platinum, already reduced to judgments, were more than sufficient in the aggregate to meet the requirements far an involuntary petition. Id.

As to Byrd's argument for abstention, Judge Keir found

no basis for completely abstaining from asserting jurisdiction over the matter under Section 305. He again, however, suggested the possibility of lifting the bankruptcy stay to allow specific claims to go forward in the appropriate state courts. Id. at 17.

Byrd appealed the Bankruptcy Court's decision to this court. Influenced by a decision of the Maryland Court of Special Appeals that agreed, at least in part, with Byrd's legal argument challenging the validity of the debts Byrd owed to Platinum, as well as comments of a Maryland Circuit court judge that Byrd's legal argument "really raised a question in his mind," this court held that Platinum's claims were subject to bona fide disputes. This Court also followed a line of cases holding that the most important factor in determining whether a bona fide dispute exists is whether the decision reducing the claim to judgment is to be given preclusive effect under the laws of the forum rendering that judgment.

For those reasons, this Court reversed the Bankruptcy Court and found that the involuntary petition should be dismissed. Because this Court's conclusion regarding the presence of a bona fide dispute was dispositive of the appeal, this Court did not reach Byrd's alternative arguments involving bad faith or abstention. Platinum appealed this Court's decision to the Fourth Circuit Court of Appeals.

On February 11, 2004, the Fourth Circuit issued a ruling reversing this Court's decision. In re Byrd, 357 F.3d 433 4tn Cir. 2004). While finding that the Bankruptcy Court's conclusion that any claim that has been reduced to an unstayed judgment can never be the

subject of a bona fide dispute was an overly broad principle, the Fourth Circuit took issue with this Court's consideration of the preclusive effect of the state court judgments. The Fourth Circuit concluded:

> The Bankruptcy Code does not require that a debtor's assets be dissipated while frivolous or hopeless appeals wend their way through the courts, but neither does it permit debt collection by every creditor that reduced its claims to judgment. Platinum was eligible to file an involuntary petition against Pyrd not simply because Platinum had reduced its claims to judgment, but because Byrd failed to raise any substantial factual legal questions about the continued viability of those judgments. We therefore reverse the judgment of the district court and remand for further proceedings consistent with this decision.

357 F.3d at 441. In a footnote appended to that last quoted sentence, the Fourth Circuit also instructed,

> Platinum's involuntary petition listed all six of its claims against Byrd. However, Platinum's motion for summary judgment addressed only the three of its six claims already reduced to judgment, and the bankruptcy court likewise addressed only those three claims in granting Platinum's motion. On remand, the bankruptcy court will have to determine whether relief on the three claims not reduced to judgment is also appropriate under 11 U.S.C. § 303(h)(1).

Id.at 441 n.4.

In his briefing before the Fourth Circuit, Byrd included extensive argument on bad faith and abstention as alternative grounds for affirming this Court's decision. The Fourth Circuit, however, made no explicit mention of either of these issues in its decision.

On the day after the Fourth Circuit issued its mandate, this Court issued an order remanding the case to the Bankruptcy Court for further proceedings consistent with the opinion of the Fourth Circuit. Byrd filed his motion to reconsider that order of remand, arguing that this Court must first address the outstanding issues of bad faith and abstention. In addition to reasserting his arguments on those issues previously made in the Bankruptcy Court, in this Court, and before the Fourth Circuit, Byrd also urges this Court to consider actions taken by Platinum in one of the state court actions between Byrd and Platinum since the Fourth Circuit issued its opinion. Specifically, Byrd points the Court's attention to Platinum's motion to substitute the bankruptcy trustee for Byrd as the "real party in interest" in a class action that Byrd had filed, pre-petition, against Platinum.[3] Byrd cites the filing of this motion as "further proof that Platinum's motive for filing the involuntary bankruptcy petition was to attempt to gain control of the pre-petition state court class action litigation Byrd had brought against Platinum, et al." Mot. to Reconsider at 8.

Given the rationale and tenor of the Fourth Circuit's decision, this Court is doubtful that it has the authority to consider these issues. The Fourth Circuit recently reiterated the permissible scope of the issues that a district court can consider upon remand;

> Few legal precepts are as firmly established as the doctrine that the mandate of a higher court is controlling as to matters within its compass. Under the mandate rule, a lower court generally may not consider questions that the mandate has laid to rest. . . . A district court must, except in rare circumstances, implement both the letter and the spirit of the mandate, taking into account the [appellate court's] opinion and the circumstances it embraces. . . . [T]he mandate rule forecloses relitigation of issues expressly or impliedly decided by the appellate court. The mandate rule does not simply preclude a district court from doing what an appellate court has expressly forbidden it from doing. Under the mandate rule, a district court cannot reconsider issues the parties failed to raise on appeal; the court must attempt to implement the spirit of the mandate; and the court may not alter rulings impliedly made by the appellate court.

South Atlantic Limited Partnership v. Riese, 356 F.3d 576 (4th Cir. 2004) (internal quotation and citations omitted, emphasis added).

As Byrd himself notes, the issue of bad faith was unquestionably presented to the Fourth circuit and was readily available as an alternative ground for affirming the decision of this Court, had the Fourth Circuit desired to do so. While it would have been helpful, had that court addressed the issue directly, it is clear from the spirit of the opinion that Byrd's bad faith argument was considered and rejected.[4] As summarized above, the gravamen of Byrd's bad faith argument was that there was no evidence presented to support the pre-

petition dissipation of Byrd's assets, and that Platinum filed the action as an impermissible means of debt collection. In the final paragraph of its opinion, quoted above, the Fourth Circuit alludes to both the dissipation of assets and debt collection, but then goes on to endorse Platinum's filing of an involuntary petition against Byrd. Additionally, the language of the footnote appended to the final sentence of the opinion clearly anticipates that this court would, upon remand, simply further remand the case to the Bankruptcy Court for a determination as to whether Platinum was also entitled to relief on the three claims not reduced to judgment.

There is a limited exception to the mandate rule allowing the court to which a case has been remanded "to reopen an issue expressly or impliedly decided by the appellate court where . . . Significant new evidence, not earlier obtainable in the exercise of due diligence, has come to light." South Atlantic Limited, 356 F.3d at 584 n.9 (emphasis added). Byrd's evidence regarding Platinum's recent filing of a motion to substitute is not "significant new evidence," Byrd presented very similar evidence to the Fourth Circuit, and made the same argument that he now makes, when he represented to that court that the trustee was seeking authorization for the appointment of special counsel to represent the trustee as "the 'party in interest' in substantial litigation pending against Platinum." Byrd's Appellant Brief at 36.

Byrd's abstention argument presents a slightly different situation, in that the decision to abstain or not to abstain under, 11 U.S.C. § 305 is not, reviewable by a court of appeals. 11 U.S.C. Sec. 305(c); In re Goerg, 930

F. 2d 1563. Nonetheless, Byrd fully briefed the issue before the Fourth Circuit and the Fourth Circuit could have instructed this Court, upon remand, to consider whether abstention provided an alternative ground to dismiss the petition. The Fourth Circuit's opinion, however, was silent as to this issue.

Assuming that this Court has the authority to now review the issue of abstention, it would not reach a decision contrary to that of the Bankruptcy Court. Determinations of law made by the bankruptcy court are reviewed de novo, while factual findings are reviewed under a clearly erroneous standard. In re Georg, 930 F. 2d. at 1566. The drafters of the current language of § 305, however, "recognized that in most cases the decision to abstain from a bankruptcy case turns on considerations unique to bankruptcy law and thus is especially suited for the expertise of the bankruptcy court. Id. at 1567 (citing Report of the Federal Courts Study, Committee, part II, p. 77, part III, pp. 371-374).

Here, the bankruptcy judge appropriately exercised that expertise. Finding the potential for dissipation of Byrd's assets,[5] Judge Keir concluded that the best means by which to protect the rights of Byrd's creditors was through bankruptcy. judge Keir, however, also reserved his liberty to exercise selective abstention under section 1334, to enable hire to address those concerns raised by Byrd as to the management of pending state litigation. This Court finds no error in those decisions.[6]

Byrd's Motion for Reconsideration will be denied. A separate order consistent with this memorandum will

issue.

William M. Nickersons
Senior United States District Judge

Dated: June 15, 2004

Footnotes

1 An excerpt of the transcript of this hearing containing the Bankruptcy Court's decision was appended to Platinum's Appellee brief at Apx. 13-18.

2 Byrd argued before the bankruptcy court, and at each subsequent stage in these proceedings, that the foreclosure had been stopped by his own payment arrangements prior to Platinum's filing of the bankruptcy petition.

3 Byrd is an attorney, and filed this class action on behalf of himself, his wife, and the class of similarly situated individuals whom had opened credit cards with Platinum after a specified date.

4In light of the Fourth Circuit claims should not be delayed while appeals "wend their way through the courts," it appears clear that the Fourth Circuit intended that this Court avoid taking up these additional issues upon remand, given that any decision of this Court on those issues would undoubtedly generate a new appeal.

5 As noted above, Judge Keir's concern about dissipation was related to a then-recent foreclosure action that had been commenced upon Byrd's residence.

Byrd acknowledges that his inability to pay his debts on time "resulted in the commencement of foreclosure proceedings on his home on occasion." Byrd Aff. at Par. 5 (Apx. 6). Although Byrd also avers that, on each occasion that foreclosure was commenced, he was able to cure the default and stave off the foreclosure sale, this Court cannot conclude that Judge sir's concerns were unwarranted. Byrd's own affidavit paints a picture of continued uncertainty as to whether his home would be sold at auction. As noted above, the Fourth Circuit, upon consideration of the same record now before this Court, appears to have concurred that the Debtor's assets were in danger of being dissipated. 357 F. 3d at 441.

6 To the extent that the filing of the motion to substitute the bankruptcy trustee for Byrd in the state court class action is "new evidence" that could alter the resolution of the abstention issues, that is a finding that must be made, in the first instance, by the bankruptcy court. See Goerg, 930 F. 2d at 1566 (observing that the district court is not authorized to make independent factual findings regarding abstention).

FILED: March 2, 2010 (36)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1988 (L)
(8:07-cv-02960-AW)
(04-35620)

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs - Appellants

v.

JAMES M. HOFFMAN, Defendant - Appellee

and

GREGORY P. JOHNSON, Trustee

No. 08-1989
(8:07-cv-03049-AW)
(04-35620-TJC)

In re: BEVERLY BYRD; RALPH T. BYRD, Debtors

BEVERLY BYRD; RALPH T. BYRD, Plaintiffs - Appellants

v.

JAMES M. HOFFMAN, Defendant - Appellee

and

GREGORY P. JOHNSON, Trustee

ORDER

The petition for rehearing en banc was circulated to the full Court. No judge requested a poll under Fed. R. App. P. 35.

The Court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk